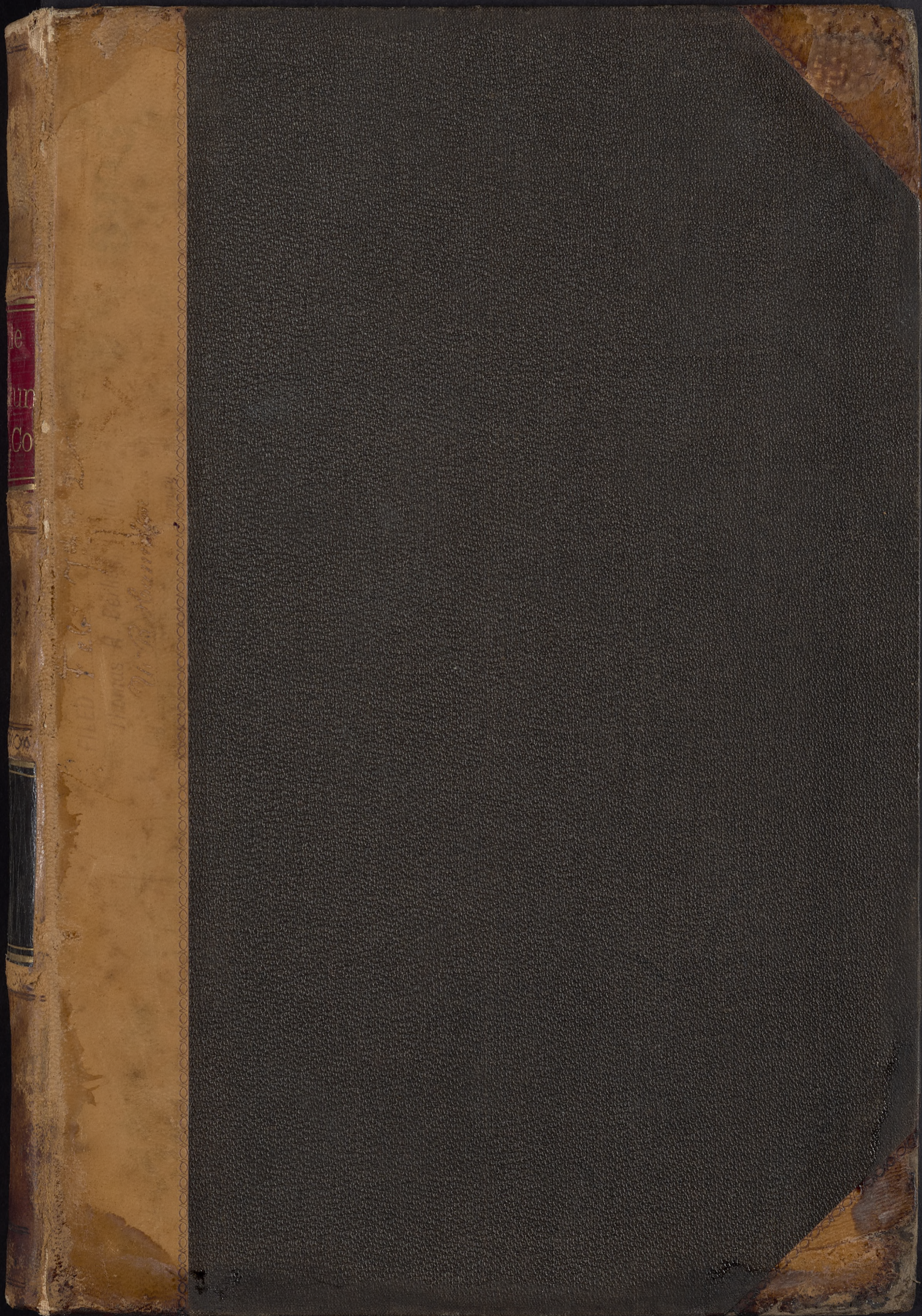




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VOLUME 43

IN THE SUPERIOR COURT,

State of California, County of Sacramento.

OCTOBER SESSION, 1881.

HON. JACKSON TEMPLE, - - - - - PRESIDING JUDGE.

WINFIELD J. DAVIS, OFFICIAL REPORTER.

SAMUEL OSBOURNE AND WILLIAM M. CUTTER, REPORTERS.

The People of the State of California, }
vs. }
The Gold Run Ditch and Mining Co. }

COUNSEL:

For Plaintiff,

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For Defendant,

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DIBBLE, A. P. CATLIN.

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of the State of California
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Winfield J. Davis
Official Reporter

In the Superior Court
of the State of California
in and for the County of
Sacramento

The People of the State
of California

vs.

The Gold Run Ditch
and Mining Company

} Afternoon Session
Thursday
Jan'y 19th 1882

Testimony
of

A. L. Stodg &

Direct examination

(Resumed)

Mr. Byrne I believe
you stated just before ad-
journment that you knew
that all of the ground which
was embraced within the
present Indianer Hill

claim of the Gold Run
Company had been located
at various times by various
persons? A- Yes Sir.

Q- You also stated what
was done in reference to
posting notices and etc. Prior
to what time was the whole
of that ground located or
appropriated for mining
purposes?

A- It was located at dif-
ferent times from 1852 up
to 1855 was the last location
to the best of my recollection

Q- Do you remember now
by whom the last location
was made?

A- The last location was
made by the German
Company.

Q- Where was the first
location made?

A- The first location was
made by H. H. Brown
and the two Miner Brothers
that I spoke of and Richard
Miller, that was the first.

location.

Q. Now you bought into that location and became a part owner of that claim;

A. Yes Sir.

Q. Whom did you buy out?

A. I bought out Jude Miner first.

Q. Did Brown sell out?

A. He sold out - Yes he sold out a little after I bought Miner out.

Q. To whom did he sell?

A. He sold out to Brindle and Ford.

Q. To whom did they sell if you know?

A. Brindle and Ford worked the ground out, the Brown location, and Brindle, Ford and myself and J. W. Miner worked that location out. I afterwards bought the claim for the right of way after the ground had been worked out by - bought the old bottom

12447

Q. To whom if you know

did the German Company
sell?

A. They sold to me.

Q. When? A. It was
in the Fall I think of 1856,
or the early part of the Winter.

Q. To whom did you sell?

A. I sold to William Brindle

Q. And do you to whom
Brindle sold that particular
location or tract?

A. He sold it to Heuyck

Q. Do you remember Heuyck's
initials?

A. I do not.

Q. Was it Aaron B. Heuyck
or do you remember?

A. I do not remember.

Mr. Rhock In asking if
this ground was located
before a patent was given
in confirming your inquiries
to the Indiana Hill Claim of the
Loos Run Company.

Mr. Byrne Yes. It was not
the original Indiana Hill Claim
that joined it on the south,
but as it is designated on that

map. Will you oblige me by just following it up the ravine there and chose upper location of which you have spoken and state to whom these parties sold their respective interests - you have a recollection of the names and the facts better than my knowledge.?

A The general company found lay here, East of my original location. I bought that. I also bought the location of James Fair, and S. J. Harriman

Q When? A I think is about 1856. Pres. Boone, I never told who he sold to but the best of my knowledge he sold out after I left there

Q Then you do not know about that?

A Of my own knowledge, I do not

Q And is that all you can say in reference to the parties

who sold prior to the time
 you left there? A well,
 this Ravine Claim 100 feet
 below my location I be-
 lieve I stated before ad-
 journment that I bought
 that of Richard Miller.
 Edmund Mason sold his in-
 terest in the location, that
 he and I and Thomas Black
 had to Black and myself and
 Black. sold to Brooks Judd.

I state any other sales that
 you know of? A that is
 all I believe.

I Now to these sales or at
 the time that they were made,
 who went into possession
 of the various properties
 which were sold?

A. I took possession of the
 Miller purchase directly
 after I had purchased it
 and worked it out - Black,
 my partner, and myself,
 we then came on to our
 ground and worked a while
 there, and Black sold out

to Brooks Judd. Brooks Judd and myself then worked the claim up to 1899 when I sold out to William Prindle leaving Brooks Judd there.

Q I will ask you if as a matter of fact, the purchasers in each and every instance took possession of the claims purchased? A Yes sir.

Q Were there any deeds or conveyances in writing at that time among miners in that district? A There were sometimes, and sometimes there were not.

Q What was the usual practice in reference to the transfer of mining claims there, at that time?

A The usual practice was to give a bill of sale for two reasons, one was to show the boundaries of the ground that you had purchased, and another to show that you did not hold any ground but what

You had a right to.

2 I will ask you if Claims were not frequently transferred orally, simply by the delivery of the money and taking possession.

A Yes Sir frequently.

2 How many instances of that kind do you recall a relation to these particular Claims?

A I have no recollection of taking a bill of sale from Miller, and I have no recollection of Black, my partner giving a bill of sale to Brooks Judd. Black simply went out one day and Judd came in and went to work the next morning.

2 Money paid I suppose: a Money Paid, and he left.

2 Possession delivered?

A Possession delivered and he went to the States.

2 Have you stated the names

of all the persons who were
 the original locators of that
 ground who sold out to other
 persons? A all that
 I recollect of. I can not
 give you the names of the
 German Company, all of
 them, nor of the Bourne
 ground only the two part-
 ners, Bourne and his partner
 that worked the ground
 They commenced to work it
 in 1854, the fall of 1854;
 what the other partner names
 were I have forgotten.

2 I state to the Court how
 continuously that piece of
 mining ground or those various
 claims now embraced within
 it were worked, from the
 time you went there in the
 spring of 1853 until the
 time you left there in 1859?

A They were worked every
 year continuously as long
 as they could get water.
 When water failed we had
 to quit work, abandon it

and wait for water the next winter

Q Did you say abandon them?

A Not abandon them, but had to quit necessarily on account of the water

Q Of course you could not work without water?

A No sir

Q When the water failed you had to suspend operations until it came again?

A Yes sir

Q Speaking of that sale to Prindle did you ever give him a deed?

A No sir

Q That was a sale made in the manner you have previously described?

A Yes sir

Q Were you ever Recorder of that District Court?

A Yes.

Q When were you elected Recorder?

A In the fall of 1854, it might possibly have been 1855

Q How long did you remain

the Recorder of that district?

A I remained the Recorder of that district up to the time I left in 1859.

Q are you now speaking of the Indiana Still district?

A Yes sir.

Q How far north or toward the railroad as it now is did that district extend?

A It extended to Potato Ravine

Q Marked on the map there that was the northern boundary of the district I understand you? A Yes sir.

Q Do you know anything about the formation of another district there, that included the whole territory?

A There was another district formed called the Mountain Spring or the Coal Spring District, but I was not present at the meeting

Q Was it done while you resided there?

A Yes sir

Q What if anything was done by that act in relation to the enlargement of the size of the claims?

A The original claims were 50 feet square and there was a Company came from San Francisco and located or proposed to locate 40 Claims and they saw that the Expense was going to be so great that it would not justify them to buy to the extent of that amount of ground and they proposed to call a miners meeting and Enlarge the claims which we did ~~not~~ from 50 feet square to 100 feet by 200

Q When was that done?

A That was done in the fall of 1852

Q Did you still remain the Recorder of the Indiana Hill district?

A Yes sir, up to the time I left.

Q Did you state to whom
Pundle sold? A Yes sir

Q You said he sold to
Ittych? A Yes sir

Q Into what places or
points did these claims
of which you have spoken
discharge their water and
tailings? A Into the
Indiana Hell Ravine.

Q And from there where did
they go? A To the North
Fork of the American River

Q At what point?

A At a point about two
miles above Fords Bar

Q Have that point any
distinctive name - do you
know where Pickens Bar
is? A Yes sir,

Q Where with reference to
Pickens Bar?

A Pickens Bar was right
opposite. We dumped our
tailings onto the North Fork
on the North Bank, and
Pickens Bar was on the
South Bank of the North

Just right immediately opposite to where are dumped our tailings or nearly so.

2 At the time you went there in 1853, were there any indications that the Claim you have spoken of the Brown & Minor Claim had been worked before?

Answered, there had been as much work according to the number of hands employed as other Claims had, the Claim that I bought into, the old original Indiana Hill Claim was the one that I bought an interest in, they had done as much in accordance with the number of hands employed as the Indiana Hill Company had

2. From that you had reason to believe that it had been worked on in 1852?

Answered, it looked that way.

2 Do you know to whom

Baird sold his interest in what was afterward called the Bourse ground?

A He sold to Fred Bourse and his partner

Q. When was that?

A I think in the Spring of 1855. He only mined there one winter with Bourse

Q. Who afterward occupied and worked that ground?

A Bourse was working it up to the time I left.

Q. Were these mining operations carried on entirely by the owner of the ground or did they sometimes employ other miners to work in the claims?

A Oh, they sometimes employed other miners. There would be perhaps 1 or 2 partners in a claim and the balance would be hired by the owners. That was the case in the old Parker Company that Levey owned in. In 1855 I was the only man in the claim who owned an interest, all

The balance were hired men

Q. When you left there in 1855 about how many men were working upon this particular piece of ground about which we are now speaking?

A. Well, when I left there

2 (Inty) or say the preceding season, the water season?

A. There were two of us that worked on that ground that season Brooks and myself.

Q. That is on your old claim?

A. On my old claim and the Germans — No! that was all. I had bought the German out before that time.

Q. Well, about the same ground, how many were working on that?

A. There were 2 there myself and a hired man.

Q. How much water was running onto that district at that time?

12460 A. Not to exceed 100 inches.

I don't think

I from what source did that come? a That come from the Bradley & Co ditch, from Cannon Creek.

I was that the ditch that was known as the Indiana Hill ditch? I see

A Afterward owned by Bradley & Co? a Afterward owned by Bradley & Co and Harkness.

Crop-Examination of

A. L. Hodge

Mr Hart. Who was it you say located the first claim there after you went there?

a After I went there I think I was the first one, that located on the Indiana Hill Ravine.

I you think you were the first one that located on the Indiana Hill Ravine?

A Yes sir, after I went

Chere these locations were made

Q There was a claim then being worked, whose was that?

A. That was J. H. Brown and he had located previous to my going there

Q. When you say located, what do you mean by located?

A. Claiming and sticking up his stakes and claiming so many feet

Q. He was there working that claim? A He was there working on that ground, at the time I went there,

Q And that is all you know about his having located it, before that time?

A That is all I know about his having located it

Q When you located your claim what did you do to locate it? A In the first place I posted a notice claiming so many claims, stating the size

Q So many feet?

A Germany List and so many
Claims.

Q Where did you post that
notice? A I posted it
on a big fir tree right close
to the ravine.

Q Did you post it on the
claim? A Yes sir, on
the claim.

Q Was there any mining
regulation at the district
then at that time requiring
any particular number of
notices posted?

Q I think that one notice
was sufficient.

Q Didn't you have to do
anything else except post that
notice? A Record it.

Q Did you record your notice?
A Yes sir.

Q Do you remember when
that notice was recorded?

A It was recorded im-
mediately after the location.
I can not give the exact
date.

Q When did you see the

record last? a I saw it
the year that I left in
1859.

Q. You say that at that
time there was a regulation
which required that on all
claims which were not in
possession by working and
were not worked, they should
keep up a notice which
they should renew every
30 days or by some act?

A. Yes sir.

Q. That was the case of Rich-
ard Miller's claim which
was not being worked at
that time? A. Yes sir.

Q. How long was it after
you went there that Richard
Miller's claim commenced
being worked?

A. Richard Miller's claim
commenced being worked in
the Spring of 1860. I com-
menced it myself.

Q. That was nearly 2 years
after you went there?

A. That was nearly 2 years

2. What was the effect according to the mining laws of failing to renew that notice?
 A Forfeiture of title.

2 It would work an abandonment of the claim?

A Yes sir.

2 Did the by-laws say that that was deemed an abandonment absolutely? A Yes sir.

2 So that under these by-laws in order to prove title of a claim that had not been worked, you would prove the renewal of that notice?

A The notice had to show on its face

2. That what? A That it had been renewed and when you renewed it, it was customary after you had filled out the notice, as far as you had room, to take that notice off and put it away and put up a new one and date it as a renewal of the last notice, stating the original notice, and

then commence from that,
and renew on again.

I well, that is a renewing
you simply gave notice of
the renewal of your claim
at the expiration of 30 days
and that was put on the
bottom of the notice orig-
inally posted? After all;

Q Do you know whether
Richard Miller did that every
month? A I think he did

Q But do you know at
this time, can you testify?

A I could not swear pos-
itively that he did it every
month. I know there was
no objection to his title

Q But you do not know
whether he renewed the no-
tice every month or not?

A I could not say that
he renewed it every month,
I know there was no one
disputed his title

Q That is not an answer
to my question. My ques-
tion is, do you know whether

or not he renewed that notice every month. You say you do not know. Now who do you say that Rich-ard Miller sold his Claim to? A He sold it to me.

Q When was that?

A In the Spring of 1854

Q You are the first man that ever worked that claim after him.

Q And you worked it first in 1856? A 1854

Q What time in 1854 was that? A I commenced in the fall

Q I understood you to say it was nearly 2 years after you went there, before that claim was worked: A I did

Q When did you go there, in 1853? A In 1853

Q You worked it in the Spring of 1854? A Yes sir

Q That is only one year? A The fall of 1854 —

I had reference when I stated that I was working the ground that I located myself

Q When did you first work the ground that you located?

A 1855

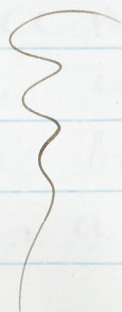
Q What ground was that?

A The next claim above the Miller claim

Q Was that the claim you first located? A Yes sir, that was the only location I ever made.

Q What was the reason that you did not work your claim before 1855?

A The reason that I did not work the Miller ground, was that J. H. Brown & Co, owned the ground in front, and I had to wait for them. Then I worked the Miller ground before I came yet to my location



Q You had to wait till Brown worked his out before you commenced working yours? A Yes

Q So as to avoid dumping on to his claim?

A I could not dump. I could not get to mine. I could not get at it at all.

Q Your claim was above his and beyond it from the Creek? A Right immediately above the Creek. Brown had a bank there 12 or 15 feet deep and the Miller claim laid beyond his and we could not get to work that until Brown worked his out.

Q Could you not work the surface of your claim? A No sir

Q Why? A There was not fall enough.

Q There was not fall enough? A No sir ~~not to~~ commence to work 15 feet down to the bottom of the ravine over another man's claim?

Q. Yes
do it.

A. I would not

Q. Why? A. Because
there was not room. I
could not get any full to
discharge the railings

Q. Why could you not dis-
charge them into the surface
of the ground or into the
ravine? A. They would
clog up. I would have to
have sluice boxes to take
them to the river.

Q. You would have to
have sluice boxes to carry
them over Richard Miller's
claim and into the river?

A. No sir I could not
work Miller's claim until
Brown worked his out

Q. You would have to take
them over Brown's claim?

A. Through the Company's
claim

Q. What do you mean by
working it out?

A. Working it down to the
Cement, that is the blue

Cement

Q After you worked that out down to the cement did you work out any more of the claim? Ans no

Q Did you put up any notice of your continued holding? Ans our sluice boxes held it

Q Did you put up any notice of continued holding of the claim when you were not working?

Ans no it was all in one Company

Q You had several mining claims and several things were essential in order to hold a mining claim. You worked one out and left that claim and went to another didn't you? A If these

claims all joined each other your working on any one part of them was sufficient to hold the whole of them

Q That is if you were the sole owner?

A. But the Company were the sole owners

Q. These three claims did not belong to the same Company?

A They all belong to the same time that I bought Judd or bought Minor out. and about that time Brown sold out to Prindle and Ford

Q. That did not give you any ownership to Brown's claim?

A Prindle and Ford and myself and Minor, the brother of the one I bought of worked out the location of Brown and Minor That brought us to the Richard Miller claim

Q And that belonged to you? A That belonged to me and my partner

Q Who was that?

A That was Black & Mason

Three of us.

Olyn and Black and Nason went to work and had that claim?

Alve commenced from there and worked right up the ravine.

Olyn and Black and Nason. A Nason sold out. He only worked about two months I think and then he sold out to Black and myself, and we then continued to work it. I was on that same ground from that time to the time I left in 1859.

When did you and Black become the owners of Brown's claim? Alve became the owners, the sole owners of Brown's claim in 1855.

Who became the owners of it? A Black, Nason and myself. After it was worked out - what we call worked out - we worked all the gravel in the channel and we then

bought Brindle and Minors interest and Ford, to the Brown location, so that then we held the Brown location, the Miller location and the location we made ourselves in our continuous claim.

Q- Was there any written Bay-law in that district, providing that the working of one claim would hold a contiguous claim?

A- If they joined.

Q- Yes that is it contiguous

A- If they joined.

Q- There was such a rule?

A- Yes.

Q- Whom did you sell to in 1859? A- I sold out to Wm Brindle.

Q- What because of the claims there?

A- He went on with my partner Brooks Jude.

Q- I ask you now what you know about it?

A- What is that?

Q- I ask you now for what you know about the matter

after that time?

A- After that time I knew nothing of my own knowledge after I sold out.

Q- Had you been continuously marking that claim up to 1859?

A- Yes.

Q- It had been marked continuously? when I was there?

A- Continuously when I was there where we had water.

Q- Well how much of the time did you have water?

A- Well it depended on the seasons. Some seasons we got water by the last of October and it would dry up by the first of April. Sometimes it would run on to the first of May before it would fail.

Q- Was the Brown claim within the present Indiana Hill claim?

A- A portion of it was and a portion of it was not I think - a small portion at the lower end

the south end of the ravine

Q- I mean the present Indiana
Keill claim that is being
worked by the Gold Run
Ditch and Mining Company?
Is it within that claim or
is it a different claim. Here
is the Brown location (Pointing
to a map) ^A It runs up to there
about there some place.

Q- Do you know where the
present Indiana Keill claim
so designated and known is
at this time, do you know
where it is? A- Yes

Q- Where were you up
there last?

A- I have not been there
since I left in 1859.

Q- You do not know where
these parties are working
now? A- Now?

Q- Do you know what they
call the Indiana Keill claim
now?

A- No Sir I do not know
where it is now.

12487 Mr. Byrne We have proven

the accuracy of that Map by Mr. Wren.

Q- Where was your location with reference to this claim marked the Meama Company?

A- This is the Meama Company. This map rather bothers me. There is a reservoir that I built in 1854 on this side hill and this Meama Company it appears takes in a part of the reservoir. This is on the Indiana Hill point, what is called the Indiana Hill point. The old original Indiana Hill claim was right in here {showing} at a point marked the Cement Mill.

Q- The first purchase was from Brown?

A- No Sir not the first purchase.

Q- Where was the Brown claim?

A- The Brown claim commenced in here.

Q- Opposite the Meama Company?

A- The old original Parker Company

was here {showing} That is what the Mill was built for to work the blue cement like this that they could not work. I abandoned the mine on account of not being able to get the gold out of it. They put up this Mill further down on the old ground, that the Indiana Mill Company had worked out. It appears so from this map. Then the Parker claim runs up here {pointing} and there was one hundred feet front on this ravine.

Q. Indiana Ravine?

A. Indiana Ravine. And Brown's location runs past the original Parker location one hundred feet and then he runs 50 feet in this direction - no - he had 300 feet. He had 300 feet up Indiana Ravine and that took him up to here some place.

Q. Opposite the Mill?

A. Opposite the Warren claim.

Mr. Byrne - That is a little further down the ravine is it?

A. I take this to be the Warren claim. It lies somewhat in a diamond form and the ravine comes close to this point here.

Q. Where did Brown's ground run to with reference to the Warren claim?

A. It commences here.

Q. Near the Cement Mill?

A. Yes - beyond the Mill company's ground and running along side the Mill Company's ground 200 feet to the south line of the Warren ground. It might run a little above the south line. The Warren claim cornered very close to the Indiana Mill ~~ruins~~ and right there close to this corner Warren sunk his first shaft.

Q. Now then take this line
12490 here, this brown line run-

ring around the present workings
would Brown's claim run
into that?

A. Yes it would. It would
run about here. This was
worked in here - I worked it
myself.

The heart You say that Brown
did not own any in there that
has been worked off?

A. Brown's does not extend
to the pit.

Mr. Hart Now then Mr
Hodge the next claim after
Brown's that was located
that you know anything
about was in 1853?

A. Miller's was located
when I went there but was
not working.

Q. He had a claim there?

A. He was claiming it.

Q. Where was Miller's claim
Point it out on that map?

A. The Brown claim comes
in here and here is Warren
grained (referring to map) and then
Miller takes in one hundred

feet and that throws it up to here.

Q. About how far from the southeast corner of the Warren claim?

A. To the best of my recollection it could not have been 12 or 15 feet. I do not know but what they cornered right there.

Q. How far does it extend beyond that corner?

A. Above this corner the Miller ground extended 100 feet.

Q. Above the corner of the Warren claim?

A. Yes. And my location commenced here. It commenced 1200 feet up the ravine about here.

Q. Your claim was the first one that ran up within this red line showing the present workings of this company, the Indiana Steel Company?

A. Yes according to that plat.

12492 Q. When was this located

in 1853?

A. In 1854

Q. When did you first work on that claim?

A. I do not think I got to that claim until the Spring of 1856.

Q. The Spring of 1856?

A. Yes.

Q. The first work within the territory now being worked by the Gold Run Litch and Mining Company that is in the Indians Hill claim, the present hill claim was that done by you in 1856 on that claim you located?

A. Yes in the Winter of 1855 and the Spring of 1856. The Fall of 1855 - I can not tell exactly when.

Q. Then you worked there until 1856? A. Yes.

Q. How deep did you work there?

A. Our bank in the deepest place was some 240 or 50 feet

2- And in 1859 you conveyed to whom?

Mr. Byrne To William Brindle.

Mr. Hart - You sold to Mr. Brindle a.s.p.

2- How much of the claim did Brindle own then after receiving your part? A- One half.

2- Who owned the other part?

A- Brooks Jude.

2- Do you know what afterwards became of Brooks Jude claim?

A- Only by hearsay.

2- Do you know what became of Brindle's interest?

A- Not only by hearsay, he told me himself. He sold out to Huyck.

2- Do not state what he told you.

Re direct-examination
of
A. L. Hodge

Mr. Byrne You have stated
that you were the recorder
of that district for some
years? A - Yes.

Q - Do you remember of ever
seeing upon the record-
book of that district the
notice of Brown's location?

A - I think I have I
would not be positive. I
was familiar with every
notice in the book at the
time I had it.

Q - You say you were
familiar with every notice
in the book? A - Yes.

Q - You think you have
seen Brown's in it?

A - I am satisfied I have. I
know I have.

Q - Speaking of Richard
Millers claim you were
asked if you were certain
that he did every 30 days

review the date upon his notice. I will ask you if anybody disputed his right there or did anyone seek to appropriate his claim?

Mr. Hart I object to that it is irrelevant and immaterial. The Court sustained the objection.

Q- I understood you to say that the reason that claim was not marked was because there was no outlet for the tailings? A- Yes.

Testimony of Osmyn Harkness.

Called for defendant. Sworn.

Mr. Byrne Where do you reside, Mr. Harkness?

A- I am living at San Francisco.

Q- Did you ever live at

Indiana Hill?

A. I have lived at Cold Springs at what was known as Mountain Springs and at Gold Run and in that immediate section there.

Q. That is in the immediate vicinity of Indiana Hill?

A. Yes within a short distance of that place.

Q. When did you first go there?

A. The first time that I was ever at Cold Springs was the last of February 1852. I just passed through then going up to Green Valley, on my way up to Green Valley.

Q. When did you become a permanent resident of that neighborhood?

A. Some two or three weeks afterwards, sometime in the month of March.

Q. In what business did

you engage when you went there?

A. The first work I done was in spading a piece of ground up there at the Springs for a garden.

2. What general business did you engage in?

A. Well I worked for wages for the first two or three months until sometime in July, then I went and took an interest in what was the old Indiana ditch and commenced working for myself in the company as one of the owners of the ditch.

Q That is the Indiana Hill ditch?
A Yes the Indiana hill ditch.

Mr Hart When was that in July 1860

A In July 1862.

Mr Byrne Q When ^{you} worked for wages what
kind of work did you do?

A Any kind of work that I could
get employment at.

Q Was it in the mines and on
the ditches?

A Yes anything packing chopping
wood or working with a whip
saw.

Q At the time you went there
had the mining districts been
formed?

A No sir not in March. I have
no knowledge of any diggings on
those hills there or anything of
that kind.

Q When was the Indiana Hill
District formed if you know?

A It was formed in - it must
have been May or June 62.

Q Were you there at the time
A I was then packing from Illinois
town up to the springs. I was
not at the hill at the time.

Q You were not present at the meeting?

A No sir.

Q Were you one of the original owners of the Indiana Hill ditch?

A Yes. I was not in the Company when it first started out. The man I was employed with took more shares than he cared to hold himself and when he had no more employment for me he requested me to take an interest in the Indiana Hill Ditch and I took one share and afterwards I took two.

Q When was that?

A I think it was the fifth of July 1852. I think it was the next day after the fourth that I did the last packing. The last packing that I done was to take some grub or provisions from Cold Springs down to High Bar on the River and that was on the fourth if my memory is correct.

and I think it was the next day that he suggested this made this proposition to me to take an interest in the ditch.

Q When was that ditch completed?

A It was completed - they got it down to the hill I think the 14th day of November 52.

Q For what purpose was the water which flows or flowed through that ditch brought there?

A For mining purposes.

Q At what place?

A The Indiana Hill was the immediate object of bringing the water there at that time.

Q Did you at any time after that become the Superintendent of that ditch?

A I became Superintendent of it, I was elected ^{or appointed} Superintendent of it on the last day of December 1854 and I took possession the first day of

January 1855.

Q Prior to that time or we will say between the time when you became interested in the ditch to the middle of 1853 who was working upon what is now known as the Indiana Hill Claim of the Gold Run Company.

Mr Hurt When was that Mr Byrne say from 1852 when you went there up to the 5th of August 1853 we will say or between those times?

A I have no any knowledge of the Gold Run Company or of any Gold Run Company in 1852 and 53.

Q You did not understand me. Do you know the ground which is now claimed by the Gold Run Company and known as the Indiana Hill Claim?

A You mean the miners ditch?

Q Yes we will call it that.

12452 That is not its name but

if you please you may call it by that name?

A If that is the ground you wish to enquire about I had a knowledge of that whole ground

Q The Corporate name of the Defendant is the Gold Run Sitch And Mining Company, you may call it the Miners Sitch Company if you please. Look at that map and see if you recognize the tract of land marked Indiana Hill Companys Mine?

A I do.

Q When did you see any person and whom did you see working upon that ground first?

A Well they had commenced here down at the lower end to make there advance, make there approach up towards it and it was some time probably in the neighborhood of 54 or 5 that they probably got up to the ground and made an opening so that they could get there. They had to make a

Start before they could get in.
 Q On what part of the ground
 was the mining first?

A The first work I saw
 done was done in the spring
 of 1853 at the lower end
 following up this ravine.

Q What ravine?

A The Indiana Hill Ravine
 Q Is it so marked on the map?

A Yes I believe it is

Q At what point with reference
 to the Warren ground —
 that is this diamond shaped
 piece?

A Below. The first work I
 saw done a man named
 Brown was working in there
 in the spring of 1853

Q Who else was working there
 besides Brown?

A Some men named Minor
 were working there at the time

Q How far up the ravine
 did they work with reference
 to the Warren Claim in the
 Year 1853?

A Well it was pretty late
 when they got started in the
 Springs. They did not get
 up very far the first Spring
 There was lumber to be got and
 a good many things to be
 done in the way of preliminary
 work before they got started. They
 continued and kept right -

Q They kept doing what?
 A They were working there.
 The last time I saw them
 they were. It was some time
 the last of May or in June 1852

Q Did you say 1852?
 A 1853 I should say

2. How long to your knowledge did they continue to work there?

A. I did not say there - I met with an accident and I was not down there - in the fall of 1853 and winter of 1854?

2. I asked you how long you know that they worked there after you first saw them working?

A. Oh, it has been continuously worked along up there.

2. How far up the ravine, with reference to the Warren claim, had they proceeded with their mining operations?

A. A hundred feet or such a matter that first season probably.

2. 100 feet above the Warren claim do I understand you?

A. No. They had not got up that far yet when I saw them there.

2. You observe upon that map the ~~Indiana~~ of the lower line of the Indiana Hill ^{claim}, do you?

A. Yes.

2. Had they worked above that point in 1853 at the time

you saw them

A. They had not got quite to it in that spring when I saw them. In 1850 they had not got quite up that far.

Q. When did you next see mining operations carried on in that claim?

A. Well probably I was not down there again until 1855.

Q. And what was being done at that time?

A. Well there had been a good deal of work from the time I saw them in the spring of 1853 until I saw it again in the fall of 1855. They had made considerable advance between the two periods of time from 1853 to 1855.

Q. Who was working there then?

A. Hodge and Judd.

Q. Where were they working with reference to the southern line of the Indiana claim?

A. They were working up a considerable distance on the ground of the Gold Run Company

there.

2. a considerable distance upon the ground of the Gold Run Company? A. Yes.

2. Who else was working upon that ground at that time?

A. A man by the name of Born was working on it. I do not know whether at that time — in 1855 — there was any other person working on it than Born or not. I know Born was working on it but whether there were any other particular parties working on any other portion of that ground in 1855, I do not remember now.

2. Do you know who first took possession of that ground for mining purposes. Describe the different parties who took possession under the mining rules and regulations existing and prevailing in that district?

A. I know Fred Born took a portion of it. And Hodge and Judd were in possession of a portion of it in 1855. Brown

was down at the lower end of it
in 1853.

Q. Any others.

A. There were two others washing.

Q. Do you remember a man
named George Miller?

A. He was not washing there.

There were only two outlets to
that piece of ground; one in the
ravine that went to Canon
Creek and the other immediately
down into the North Fork of
the American River.

Q. What Miller took a claim
there?

A. I could not be
too positive about that. I know
he was down there but could
not tell what was the nature
of the boundaries of his claim.
I know he represented he had a
claim there somewhere.

Q. Did you ever see Hodgeat
work on that claim?

A. Yes, I have.

Q. When?

A. 1855 to 1859.

Q. Where was he at work?

A. On the Hill and in a Ravine.

Q. North or the south line of the

"Indiana Hill Company" as
marked on that map?
A. Yes.

Q. Who succeeded his interest in
that property? A. Wm Pringle.

Q. Did you ever see him at
work there? A. Yes.

Q. When. A. In 1854. He
was not there a great while.
I do not know whether he was
there more than one season or
not.

Q. And you saw him in 1854?
A. Yes.

Q. What were you doing at that
time? What was your business?

A. My business was mining
and attending to the Indiana
ditch; attending to the sales of the
water of the Indiana ditch.

Q. Did you sell water to that
plain? A. Yes.

Q. How frequently were you upon
that trouble?

A. Well through the season of
water I was there two or
three times a day; sometimes
four or five times a day.

2. On the Indiana hill claims?

A. Yes.

2. Can you tell us how it was then known? if there was a different name.

A. It used to be known as the Hodge and Bone ground. Those two I particularly know and remember.

2. The claims were usually known by the names of their owners?

A. Yes. I charged water in the name of the person who operated the claim.

Q. To whom did Pringle sell?

A. He sold to Thuyek.

2. When was that?

A. I could not be positive just what year it was?

2. Who succeeded to the interest of Brooks and Judd?

A. His brother.

2. What was his name?

A. William.

2. Within your knowledge how continuously has that claim been worked since you first saw it in the year 1852?

Q. There has been work going on there whenever I was down there, the year 1853. After they got the water in 1853 I never knew a season to pass but what there was more or less work done on it. They worked all the time they had water.

Q. When did you last see the Indiana hill plain?

A. I think it was two years ago.

Q. Do I correctly understand you that in 1853, when the water ^{was} first brought in there up to two years ago when you last saw it, work has been going on there every year? Judge Belcher. He said he was not there two years and could not testify as to that certainly.

The Witness. I could not testify to anything, only what I really saw there. But all the time up to 1876 - after 1865, I ceased to go down there so regularly, I do not know as to intervals - at the times I was there there was work going on.

Q. Did you ever locate any plains in what is known

as the Gold Run Mining District?
 A. They have got the name so
 changed in these places that I
 hardly know how to answer.
 If you include this whole concern
 here I have.

Q. Will you look upon that map
 and see if you discover a
 claim known as the Harkness
 claim?

A. Yes.

Q. Who located that?

A. I located it in company
 with others.

Q. When?

A. In September 1852.

Q. In company with whom?

A. With some man by the name
 of Brown.

Q. What became of the interest of
 Brown in that claim?

A. I got it.

Q. Did you say you bought it?

A. I did not particularly buy it.
 They gave it to me.

Q. You succeeded to their rights?

A. Yes.

Q. How long did you remain the
 owner of it?

A. Until July

1876.

2. To whom did you sell it?

Judge Belcher. That is shown by the deed.

Mr Byrnes. To whom did you convey that claim when you sold it?

A. The Gold Run & Witch Company, or Gould and Company. He is the agent of the company, I believe.

2. State how continuously the claim was worked from the time you located it in 1852 to the time you sold it in 1876?

A. The first two or three years I did not do much of anything on it on account of not being able from physical injury by having my knee put ^{out} of place.

2. Did you do anything to keep it up?

A. Yes, I did. I caused enough to be done to keep it up.

2. You kept your title good?

A. Yes. I took a partner in in the fall of 1855 or 1856 by the name of Shield. I brought him out in 1858 again and from that time up to the time I sold it I had no partner with me.

in the drain.

Q. Describe how extensive you worked that and how continuously?

A. I worked all the ground excepting where this reservoir stands and the 200 feet next to the railroad.

Q. I asked you how continuously from the time you commenced operations?

A. Right straight along, every season; never missed an hour when I had water.

Q. Do you know a claim in that district called the Karnar claim?

A. Yes.

Q. Who located that?

A. A man by the name of Custer and others.

Q. When?

A. I could not tell you the exact date but it was either in the fall of 1853 or early in 1854.

Q. What was it originally called?

A. The Custer Company ground.

Q. Did you ever own that ground or any part of it?

A. I did.

Q. When?

A. I bought it in

August 1852 — my interest in it.
 Q. From whom? A. Castell.

Q. Did you get any deed?

A. No, not that I remember of.

Q. Was it customary at that time to take deeds of mining claims?

A. I never saw deeds in transfer at that time at all.

Q. What was done in that respect?

A. Some gave a bill of sale and some took a receipt for their money in thorough payment.

Q. Did you pay Castell the purchase money? A. Yes.

Q. Did you go in possession?

A. Yes.

Q. How long did you continue to be the owner of that interest?

A. Something over a year.

Q. Who were your partners?

A. A man by the name of George W. Ritchie, Levi Karnar and Zadock Karnar.

Q. How long did Ritchie remain an owner?

A. Something in the neighborhood of a year.

Q. To whom did he sell if you

Know?

A. He sold to Zadock

Karnar.

Q. How long did you hold your interest there?

A. I sold out a very few days after Ritchie sold out to Zadock Karnar, to the best of my recollection.

Mr. Hunt. You and Ritchie both sold to Zadock Karnar?

A. Yes.

Mr. Byrne. To whom did Zadock Karnar sell?

A. He sold to J.B. Taylor a part of the ground, I believe; I could not be positive. I know he sold an interest to J.B. ~~Karnar~~ Taylor.

Q. State to the Court how continuously that claim was worked from the time it was located in 1853 until the time you left there in 1876?

A. I never knew a season but what it was worked when there was water to had.

Mr. Hunt. From 1853?

A. Yes, from the winter of 1853-4. I know the first work

was done in 1853-4.

Mr Byrnes. Into what were the water and tailings from that plain sent?

A. They discharged into Canon creek.

Q. What ditch supplied that plain with water during the time you were ^{owner} of it?

A. The Indiana Hill ditch.

Q. And later, what ditch if you know?

A. Well they have had water from the other ditches. After 1865 I did not attend to the Indiana Hill ditch myself and consequently was not there so regularly. But I have knowledge of their getting water from the South Yuba and the other ditches.

Q. Let me ask you if you know from what ditch the water used by the Indiana Hill plain was obtained from 1870 until you left there?

A. From the Gold Run Co's ditch.

Q. Did that ditch ever have any other name?

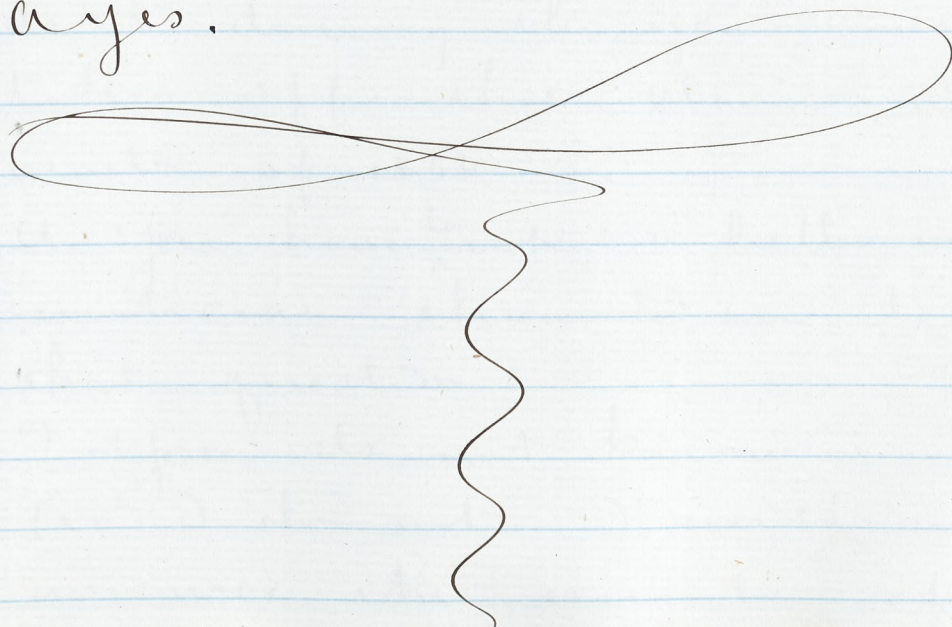
A. It used to go by the name

of Bartlett and Thomas ditch.
The first I ever knew of it; it went
by the name of Pollard ditch. Then
it went by the name of the Bartlett
and Compton ditch.

2. How long have you known that
ditch? A. I have known
it since 1859.

2. What time was it completed to Gold Run?
A. I do not know just what
years it was taken down to
Gold Run. But it came in there
at the head of my claim to
this reservoir, in 1859, or rather
I think early in 1860. When it
got down to this reservoir, I
think it was 1860.

2. That is the reservoir at the
head of your claim?
A. Yes.



Cross Examination of

Osgyn Hartness

Mr Hunt. Q. When was the first work done on the Rannar claim?

A. In the winter of 1853-4.

Q. What work was done at that time?

A. There was a cut run through the rim of the bedrock some 12 or 14 feet deep, sluice boxes were put in and some dirt- through it. There was a ditch dug from a ravine called Goozling Ravine.

Q. Where was Goozling Ravine?

A. It was ^{north} near of the Rannar ground.

Q. How many cubic yards of dirt during the year were taken off that claim, in the winter of 1854-5?

A. You have ^{to} ask a better mathematician than I am to answer that question.

Q. You do not know?

A. I do not. I could not answer the number of cubic

yards that has been taken out because I never attempted to make any ^{calculation} ~~conclusion~~ of it at all.

2 But I am sure that year?

A. Oh, there was a bank, I should think, something larger than this room and in the neighborhood of as wide.

2. How deep? A. 25 or 30 feet.

2. How was that work done?

A. By running water over it and running the dirt out through the sluices.

2. In the genuine hydraulic, was it?

A. There was no hydraulic put there at that time - 1854. There was no pipe put there until afterwards.

2. You had your ditches at that time?

A. In 1853-4 there was no hydraulic.

2 But you had your ditches at that time and the water ran through hose and small nozzles did it not?

A. The water that ran through hose was run through in the

spring of 1855 - the first water
that was run through hose.

Q. Before that how did you
wash? Did you pick the dirt?

A. I did not see the work done
in 1854. I in 1853 - I was
not there to see the work done.

Q. Do you know whether there
was any work done there in
1853 - 4?

A. Yes.

Q. You saw that it had been
done?

A. Yes.

Q. Now, do you say that they
worked it continuously there every
year after this?

A. Yes.

Q. Until what time?

A. Until they got their ground
all washed off down to that
grade.

Q. When did they get that washed
off?

A. I could not
say just what year.

Q. That was before 1860 was it
not?

A. No. It was not
before 1860. They did not finish
it up until sometime in 1870.

Q. Did not finish up the big
washings?

A. No.

Q. Do you mean to say they worked every year there ^{until} ~~until~~ up to 1870? Ayes I do.

Q. The same owners of the claims?

A. The men who succeeded one another. The original Kumar did not sell out there and Taylor and Moore did not sell out until sometime in the 70's; I do not know what year.

Q. Did you see them at work on that claim at any time between 1865 and 1870?

A. Frequently. A number of times.

Q. Did you have occasion to go there?

Ayes.

Q. How often did you go there in the year 1865?

A. When the Blackness ground was working I made it convenient to go upon that ground.

Q. Where were you living?

A. I was living in a cabin right by the Blackness ground near Baum Creek.

Q. ~~What~~ ^{On} Baum Creek?

A. A short distance from
Panor Creek.

Q. Did you run the Shurtness
claim up to 1863?

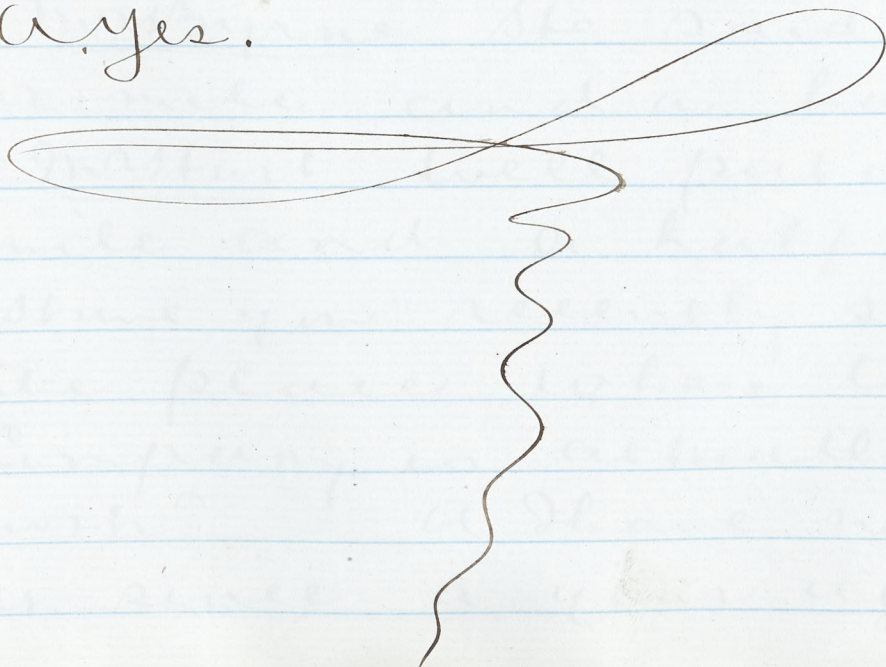
A. I run it up to 1874 and
then I got the surface or top
all washed off.

Q. How far is the Karnar
claim from the first workings
of the Gold Run Mine, the ground
that they are now working
upon?

A. It may be
up a little over that hill?
<Examining map.> It would be a
hill.

Q. How far is it from the
Shurtness claim to the In-
diana Hill claim? That is
more than a mile, is it not?

A. Yes.



Q How far, would you say it is, - two miles?

A It would be two miles the way you would have to travel but on an air line I don't think it is.

Q How much of the dirt that they are washing will they have to wash off the surface before they reach the Starkness claim from the present workings of the Company?

A About a mile and a half I have not looked at the map. Well enough to tell. The section lines show

Q It is about two miles?

Mr Byrne He said about a mile and a half

Mr Hart Well put it a mile and a half.

Have you recently seen the place where this Company is actually at work? A I have not seen it since a year ago last

June

Q Well now look at this plat that I have here
This is the Indiana Steel
Claim. Now taking the
brown line as representing
the present workings of
this Company, the Indiana
Steel claim, when within
your own knowledge, was
work first done upon
that Indiana Steel claim
within those workings —
not within the patent but
within the brown line?

A The first hydraulic
I ever saw —

Q No the first work
of any kind within the
present lines — the lines
where they are now working,
where the brown line is —
when did they first com-
mence working in the
rop there not until 1856
was it? A Yes Sir I am
positive I saw it in 1854

Q Who was doing it?

A man by the name of Bourne was working it

Q That was not within the present limits of the Indean Steel claim was it? A Yes sir I think it is, it must be

Q You say you saw it as early as 1854 was anybody else working within the lines before the last witness Mr Stodge worked there? A Mr Stodge the first work I saw him doing was in 1855

Q Was he working in that? A He was some where in there. I don't know whether he was on that ground — yes he was on it when I first saw him, the first time that I saw him in 1855 and he was working all the time around the hill there. I did not know it was his particular place of

working

Q. But you are not certain that he worked within these brown lines are you?

Mr Dibble He has said so twice

Mr Stark I am willing it should stand that way but Mr Stodge swore that he did not. Are you certain that he worked within those brown lines?

Mr Byrnie Mr Stodge swore that he did not know what those brown lines represented. These workings have been made since he left there.

The Witness I could not tell by the way that is laid down there.

Q. I asked you if you were sure that Mr Stodge worked between those brown lines?

A I cannot comprehend the way that map is drawn.

Mr Stodge I never stated

that I worked within the brown lines. I said that the claim that I purchased from Bourne did not extend into that brown line but I worked away into it.

Mr Stark From what time?

Mr Hodge I must have commenced working there as early as 1855 it must have been away up in here (referring) I worked from 1855; about that time I struck my own location. I worked from that time continuously in my own location and that was nearly all contained inside of that brown line up to 1859.

Mr Stark You say now that you did not state, or you mean to say that you did not work within that brown line until 1856 - you said you worked there in 1855

Mr Stodge I don't think I
 stated that I worked
 inside that brown line
 in 1856. I said it might
 have been 1856, the winter
 of 1855 and 1856. I think
 that I crossed it then but
 from that time on until
 1859 I was all the time
 in there.

Mr Hunt I understand
 that. I was getting at
 the date. <To the Witness>

Your Hardness claim,
 when did you say you
 commenced working that?
 in 1854? A I commenced

regularly set in for earnest
 business in 1855 - the
 Fall of 1855 or 1856

Q when did you do
 your first work? in 1855?

A In 1852

Q what did you do there
 in 1852? A well, I

opened a cut along there
 with a pick and shovel
 and moved some boulders

and worked down to see
how deep it was to the
bed rock

Oeym did not move a
half a dozen ^{cubic} yards in
1852 did you?

Awell I think I did

Oeym are not positive
about that at all?

Ayes sir I would be
positive about it

O how much do you
think you moved in
1855? A Purvis to 1855

Awell, I mean in 1852?

Aoh in 1852 I ran
considerable of a cut
up into the gravel

Aw what did you do in
1853? A I did not do
anything in 1853

Aw what did you do in
1854? A In 1853 I got
my knee put out of
place; in 1854 I went
when I got able so I
could move around
to Scales' diggings in

Sierra County - I guess it
 is Yuba County - no it is
 in Sierra County

Q You did not do any
 thing with the Starkness
 claim in 1854? A No sir

Q In 1855 did you do
 anything on it?

A I did not make a
 general business. I had
 work enough to keep it
 up to let them know
 that I held the claim
 all this while

Q What did you do?

A Well, I would dig
 some and put up my
 notices and one thing
 and another I cannot
 just just what all I
 did do

Q Did you leave your
 tools in your claim -
 they ~~used~~ to hold their
 claims by leaving their
 tools didn't they?

A It is always supposed
 that as long as the tools

were left in a claim that the man had not abandoned it. In some instances that was the case. I do not know whether it was general or not.

Q Was that so in the Gold Run district?

A Well, at the time I made my location there was no district there. I was not connected with any district whatever.

Q When did you first file your claim with the Recorder of the District?

A I never did have it filed with the Recorder.

Q Never recorded it?

A I never did, but when I was in partnership with S I believe he had it recorded.

Q When was that?

A I could not tell you.

Q When did you ^{say you} get down to the blue gravel? that

is when did you say
that you have succeeded
in working off the surface
gravel?

A When I finished it?

Q Yes sir

A I finished the last
work that I caused to
be done in 1874

Q How long was it after
that before you sold?

A Unt^y 7 Mo I am mis-
taken it was in 1875

Q What time in 1875?

A In the Spring of 1875

Q When did you dis-
pose of your claim?

A Sold it in 1876

Q In the meantime
there had not been any
work done at all had
there since 1875? and

A I could not tell what
the owners have caused
to be done

Q What was done after
you got through with the
work and before you

sold it - after you had taken off all the gravel there what did you do between that time and the time that you made your sale?

Army son in law took up the boxes and cleared up the ground sluices previous to my selling

Q You were taking up the boxes and sluices?

Army son in law did

Q How long were those boxes taken up before you made your sale, the deed?

A The Summer before the Spring before

Q The claim had been lying there then without any boxes for seven or eight months had it?

A There were no boxes in the ground - there were no boxes only at my cut when I sold the ground, they had

been all taken out

Q Where were you living at that time? A I was living at Blue Cañon - at Lost Camp part of the time and part of the time at Gold Run

Q How far from the Sturkness mine?

A A mile and a half probably - in the neighborhood of that

Q Did you have anything at all in the claim after your son in law took up the pieces?

A I had probably a mile or two miles of pipe, several tons of pipe at any rate

Q That you had been using when you ran the mine? A Yes sir the pipe had cost a number of thousand dollars

Q Was that being used by anybody at the time? A At that time?

Q Yes sir A after I
quit till I sold?

Q Yes sir A No sir
it was not being used
Q At the time that you
and and Ritchie had
the ~~Harner~~ claim how
did you hold it together?
as tenants in common or
partners?

A Just as
tenants in common as I
understood

Q Did you have any
other partner with you?
did anybody else have
any interest in the claim?
was anybody else owning
an interest with you
at that time?

A I think there were only
the four of us holding
that Castile cut ground
to the best of recollection

Q Now say you bought
an interest in it in
August 1854 that you
owned in partnership
with Eli Ritchie?

A George W. Ritchie

Q Levi ~~Karner~~ and
Zador Karner? A Yes sir
Q Now what became
of Levi ~~Karner's~~ interest?

A His brother got it

Q Did he sell it to him?

A I presume he did

Q You don't know anything
about that? A I do not
know what happened to
them. I would not say
of my own knowledge
but I know that Zador
always claimed it

Q That is all you know
about it? You and Rikie
sold to Karner and
Karner sold to Taylor?

A Yes sir

Q Zador Karner was
the man you sold to?

A Yes sir

Redirect Examination of

Ormyr Starkness

Mr Byrne Q In reference to that Starkness ground you were asked as to whether or not any work had been done on it since 1876 to your knowledge. Do you know whether or not that ground has been patented and a patent obtained for it? A The patent has been applied for. I took the preliminary steps in getting the survey for that ground in connection with other ground.

Q. In connection with what other ground?

A Well with the Sacks and Co. the Benton and quite a number some seven or eight or ten others.

Q Can you state to the Court how that Patent

was known or how that application was known?

A The application the way I got it was in the Church and Golden Gate

O So I understand you that the Starkness which you have been describing is a part of what is called the Church and Golden Gate claim as patented? Ay yes sir

Mr Stark When was that district formed as a district - as the Gold Run district?

Awell I could not tell you really. I think it was in 1858

O Do you remember when by laws were adopted in the district?

Awell I have a knowledge of that but I would not state

O Sometime after the formation of the District was it? Awell there

was a Committee appointed
to draft by-laws at a
meeting that was called
at Mountain Springs

Q Do you know who
drafted the by laws?

A I am not positive

Mr Byrne I want to
offer some document
any evidence. I want
to recall Mr Gould
for the purpose of
identifying the claims
which are included
in these various evidences
of title

Testimony

of
J. L. Gould

Re- Called

Mr Byrne I will ask you Mr Gould, if you desire to make any correction in your testimony as previously given and if so in what particulars?

Ayes sir I was asked if all the Company's claims were patented South of the Railroad. I stated that all but two and there are three. We have an interest in the Druid claim of two fifths that I did not mention at the time. That is not patented.

Q Why didn't you mention it then? A I forgot it.

Q With that exception your statement was correct as to the extent of the claims patented?

Ayes sir

Mr Byrne Your Honor will remember that when I offered these Patents and Deeds from the Patentees I made a brief statement of their contents which went into the Record, to which as I understand it, no objection was made as to the sufficiency of the description there was no objection and no question of the identity of the ground conveyed but something was said afterwards in relation to that which makes me consider it necessary for me to have that understood at the present time. I now ask the Attorney General if he requires me to read these descriptions of the several Patents.

Mr Hart It is not necessary to read the descriptions they are already in evidence.

Mr Byrne These documents
 have been offered in
 evidence and I replied
 when he was before upon
 the stand stated that
 they did embrace the
 properties of the Gold
 Run Mining Company
 and at that time, as your
 Honor may recollect, we
 said something about
 certain admissions in
 relation to this whole
 subject which we all
 supposed would obviate
 the necessity of anything
 else on this subject. Now
 we offer to show by this
 witness if required by
 the other side that the
 deeds and Patents now
 in evidence which have
 been heretofore admitted
 by your Honor do embrace
 and do describe the
 particular claims designated
 upon this map by these
 various names which are

now the properties of the
Gold Run Company
Mr Sturt They do describe
them by name don't
they?

Mr Byrne In some instances
yes and in some instances
no. For instance a mine
described here in the
Church and Golden Gate
Patent embraces quite a
number of other claims.
It embraces the Golden
Gate, and Church, the
Palmer, the Starnes,
the Parks and the
Starbness, as Mr Sturtness
has just testified and
embraces quite a large
extent of territory there
~~and~~ under the technical
name in the Land office
there of the Church and
Golden Gate Placer Mine
we are prepared to prove it
if required

Mr Leadwales I have
looked over those papers

and I think they are sufficiently explicit to be understood and if they are not we will give you notice of it. We think we know something about the area of the land in those papers and the claims that they cover. The Patents of course are United States surveys.

Mr Byrne The Patents, of your Honor please do not designate the particular claims by their original names. The Patents simply describe a given tract of mining land by given courses and distances commencing with relation to some particular section line or stake and thence running around a piece of ground and upon their face it does not appear for example that the Starkness claim is included in the Golden Gate Patent.

Mr. Goodwalade, There will be no disagreement as to the Territory covered by those papers. If there is we will give you fair notice.

Mr. Byrne I now say that I do not desire to leave anything more to future agreement or to possible agreements that may be made in the future. I was prepared then to prove every thing that was necessary to be proved in relation to this whole subject better prepared then than I am now because many of our witnesses whom we had here particularly for that purpose have gone away and some of them we could not induce to return and their return we could not compel because they live at a distance, and I now wish it distinctly understood beyond any possibility of future controversy as to whether we would be required to identify by any witness the particular lands which are described in these Patents.

Mr. Cadwalader The patents cover 800 acres as I understand it.

Mr. Byrne I do not think they do and if they covered 1800 acres that would not make any difference. I simply want to show what ground they embraced in connection with the testimony so as to connect it with the testimony of the various witnesses in relation to these old locations.

Mr. Cadwalader There will be no objection to that.

Mr. Byrne Do you admit it?

Mr. Cadwalader No. But there will be no objection to your showing it, although I think that the patents upon their face seem to be explicit.

Mr. Hart. I would suggest that so far as the patents are concerned I am willing to admit that the patents embrace the land in

Controversy but there are
 some deeds made since the
 commencement of this
 suit and I would like to
 know the land that they
 relate to

Mr Byrne We could accept
 that admission

The Court. What is it, that
 your claim that your patents
 cover the entire district?

Mr Byrne. No sir, I can
 name the claims

The Court. all except those
 three claims.

Mr Byrne Not the entire
 district because other
 persons owned mines in
 the district

2. Name them Mr Jones,
 commence at Indiana Hill,
 and go up?

A Just the Indiana Hill
 Patent covers the Indiana
 Hill claim. Next, going
 north, the North Star Patent
 covers the North Star claim.
 Next is the Gold Run Patent

Covering the Gold Run Claim

Q How much do you own of that? A One half

Mr Hart. That is shown by the deed? A Yes sir

The Court. Answer divided half?

A Yes sir. Then the Church and Golden Gate Claim, the Karner, Palmer, Sachs & Co, Brown & Co.

Q What patent covers that, the Karner Patent?

A The Church and Golden Gate. That also goes above here and covers the Goosling Ravine so called, the Blue Gravel Claim, the Bay State Number 1, the Benton and Excelsior Mr Byrne. Do you own the Excelsior? A No sir

Q State just what you own. A Well, I will

go over it again. The Church and Golden Gate, The Karner, The Palmer, The Sachs & Co, and The Brown & Co

Mr Hart. Don't you own the Church and Golden Gate Claim,

also? After this, I
 named them first. And going
 north to the Denton Claim
 and the Harkness Claim is
 owned by the Gold Run Company
Mr Byrne. In that all of
 the Claims that are embraced
 in the Patent.

A that is all that are
 embraced in the Patent
Mr Hart. We admit that
 these Claims are embraced
 in the Patent. I come I
 like to know what claims
 were conveyed by the deeds
 executed after the com-
 mencement of this action
Mr Byrne. The deeds are all
 in evidence.

Mr Caldwell. The deeds show
 for themselves.

The witnesses I think I can
 explain that.

Mr Hart. But first I would
 like to ascertain what claims
 they are, and then see, whether
 those things can be explained.
 Of course mining Claims

Since 1860 could only be
 conveyed by written instrument
Mr Byrne I can explain it
 in a few words. I will
 make a brief statement
 which probably will enlighten
 the Attorney General
 upon this subject and save
 further trouble. Just now
 will remember that it was
 testified by Mr Jones when
 on the stand before, that
 a number of claim owners
 united in making their
 application for a patent
 which is known as the
 Church and Golden Gate Patent.
 That after the Patent was
 obtained conveyances were
 interchanged between the
 various parties, putting
 back into the original owner
 or into the true owner
 the various tracts of
 land designated in the
 Patent. A number of
 the claims were included
 in one general survey

and at that time, - these claims were conveyed to John Nichols and J. L. Gones both of whom are trustees of the Gold Run Company, and these conveyances which were recently executed and to which Attorney General Hart refers, are the conveyances of the legal title which was put into Gones and Nichols as Trustees for the Corporation defendant here, which by some error had not been previously executed.

Mr Hart. I notice that conveys the Church and Golden Gate property.

Mr Byrne. That is in the Church and Golden Gate

Mr Hart. Now there is another, a conveyance to the Corporation by Mrs. Nellie L. Prindle.

Mr Byrne. That was the Benton claim. She was the successor of one of the Patentees.

Mr Cudwelder They seem to have purchased from the Patentees since the commencement of this suit, by the defendant. There were simply for the purpose of putting back on the true owner the title obtained by this Patent.

The Court. They had made that by way of partition, to get back the specific tract they had formerly owned.

Mr Byrne That Expresses it exactly.

Mr Hart. I suppose each of these deeds mentions the mine and gives the name of the mine, as it is marked on the plat there.

Mr Byrne I think so, that is the proposition that they only refer to the title obtained under that Patent.

Mr Hart. If the other deeds all refer to them by name that ends the controversy.

We do not want you to

put in any proof on it.
 If you have any deed
 there, that does not do that,
 you can explain it to us
 by Mr. Jones at any time
 during the progress of the case.
 We do not intend to con-
 trovert any proof that is
 put in here on this subject
 that I know of
 Mr. Byrne. I have some doc-
 umentary evidence. When
 Mr. Jones was before on the
 stand, as you know may
 remember, a deed was then
 offered, conveying one half
 of the Gold Run Claim to
 the Defendant here, and it
 was stated, that that deed was
 from Thomas B. Ludlum and
 it was then stated, that
 the patent under which
 Ludlum held the title was
 not accessible to us, and
 that we could pro-
 duce it if neces-
 sary

I now offer in
 Evidence a certified
 Copy of the patent
 from the United States
 Government to Thomas B. Ludlum
 dated the 1st day of
 February 1876 which
 conveys the property
 described upon that
 map as the Gold
 Run Claim.

McAdwalader I saw
 many acres of land
 do those claims
 embrace?

The witness You mean
 the entire district
 south of the Rail
 road?

I No, I mean those
 claims there?

A I could not tell
 you without reckoning them up
Mr Hart. Have you ever seen this patent
 spoken of to Thomas B. Ludlum and read a
 description of it? A I do not know that I ever did

Mr. Byrne - We propose to offer evidences of our title to the property known as the Ditch and Water property of the Gold Run Ditch and Mining Company among which are some of the deeds which have previously been admitted in evidence and it will be necessary to refer to them again now in order to make the chain complete.

I offer in evidence a deed from William Judd and others, composing the Miner's Ditch Company dated August 13th 1870 to the Gold Run Ditch and Mining Company - which conveys the water and ditch property known as the Gold Run or Miner's Ditch. That deed is already in evidence.

Next, I offer a deed from E. M. Hall to William Judd and others, grantors in the former deed, dated the 13th of April, 1868 - conveying the same property. That deed is also in evidence.

Now we offer a certified copy of the letters testamentary, to William

H. Hubbard as the executor of the Last Will and Testament of Henry Hubbard deceased issued from the Probate Court of Placer County.

Mr. Hart - We are willing to allow those papers to come in in bulk.

Mr. Byrne - The difficulty however is that is to get a record of them in the reporter's notes.

The Court - For that matter you can make a list of them for the reporter and let him write them in his notes.

Mr. Byrne - Very well. I will submit the list of them, so far as the Ditch and water property is concerned. I will present you with the list (Handing the abstract to Mr. Hart)

Mr. Cadwalader - That abstract is correct.

Mr. Byrne - You do not know, you have not seen it. We have here a number of certified copies of deeds which trace our title back to the original owner of the Ditch in 1854.

Mr. Hart - Did you get your title

to this property as shown by this abstract. When did the present defendant get title to the property?

Mr. Byrne - On the 13th of August 1870.

Mr. Hart - We will admit as a fact then that the company got title to the property then.

The Court - But they are trying to prove that their title relates back to 1854.

Mr. Byrne - That is what we propose to prove.

Mr. Hart - We will admit that they have owned the property since 1870 that is the ditch property.

The Court - But they are trying to establish a different proposition altogether. They are trying to show that they and their grantors have held the property ever since 1854.

Mr. Hart - I am willing that they shall file this abstract and that these deeds referred to in it shall be considered in evidence.

Mr. Byrne - That runs back to the 5th of December 1854, the time when our right was originally

located.

The Court - Let the abstract be put in there.

Mr. Cadwalader - The abstract can stand in lieu of the deeds.

Mr. Hart - It will be considered that those deeds are in evidence. I am willing that you shall file the abstract and consider every deed there as offered and admitted in evidence.

Mr. Byrne - Do you admit the identity of the properties described in those deeds with the Ditch properties?

Mr. Hart - Is that a fact?

Mr. Byrne - Yes.

Mr. Hart - Then I will admit it.

The Court - The identity of the property then is admitted.

Mr. Cadwalader - That Ditch was completed according to the testimony about the year 1866.

Mr. Wilson - But the location was earlier than that.

Mr. Cadwalader - Yes. But I mean the time of the completion. And that was in 1866 according

to Mr. Hamman's testimony.

Mr. Byrne - I will hand this abstract then to the reporter together with the certified copies of the deeds referred to.

Mr. Hart - He can mark those certified copies as exhibits in the case.

Mr. Byrne - Will it be admitted also that the property has been held in conformity with those deeds?

Mr. Hart - If it is true I will admit it.

Mr. Cadwalader - What is that?

Mr. Byrne - That the present defendant and its grantors in interest have ever since the location of the water right and the construction of the ditch had titles to them derived under the deeds referred to.

Mr. Hart - And that they have held possession of the ditch?

The Court - State your admission so that it can be taken down by the reporter.

Mr. Wallace - I understand then that the identity of the

property is admitted and that the possession has gone in conformity with these deeds from one to the other as the deeds would indicate.

Mr. Cadwalader - That is the way that we understand it. That that stands as an abstract of the ditch property and that the admission is that the possession accompanied the various transfers of the property.

Mr. Wilson - The possession and the use.

Mr. Cadwalader - Certainly.

Mr. Byrne - In relation to the Harkness Claim we offer a certified copy of a deed from Oswin Harkness to the Gold Run Ditch and Mining Company, dated July 7th 1876. It is already in evidence as it has been testified to by two witnesses - by Mr. Harkness and Mr. Gould - that the Harkness claim is embraced within the Church and Golden State patent and that Patent is in evidence.

The Court - I do not think there is any mistake about that, that is admitted to be a fact as I understand it.

Mr. Byrne - We have in reference to the Indiana Hill claim a derivation of title from the various grantors to the present defendant - not from all of them but from many of them, commencing with Frederick Bome the title running to the Cold Run Ditch and Mining Company. We have certified copies of every paper mentioned there.

Mr. Cadwalader - I supposed that those papers were in evidence.

Mr. Hart - Are those dates correctly stated in this abstract?

Mr. Byrne - Yes.

The Court - But those are papers that are not on that abstract?

Mr. Byrne - They are not on that abstract.

Mr. Cadwalader - Is this a new abstract?

Mr. Byrne - It is an entirely different one. This takes the title, the record title back to 1866 and

we claim that we have proven by witnesses here to day that titles existed in these various parties from whom we have deeds prior to 1860.

Mr. Byrne - The oldest deed I think is 1866 but that is connected with the oral testimony as given this morning. We desire to show by this that we are the successors of the original locators of the mining ground and property.

Mr. Hart - It will take but a few minutes to offer those in evidence. You have offered the patent to James L. Gould and Judd and Brown.

Mr. Byrne - Yes.

Mr. Hart - There are only two or three deeds here and you can offer them now. You can just name the deeds and there will be no objection to them.

The Court - Name them so that the reporter can get them.

Mr. Byrne - All these relate to the Indiana Hill,

Mr. Hart - Do they convey the Indiana Hill?

Mr. Byrne - Various portions of it.

Each one does not convey the entire

claim but only portions of it.

Mr. Hart - But all of them together convey the entire claim.

Mr. Byrne - I think so.

The first I will offer is a deed from William Judd, James L. Gould and Henry H. Brown to the Gold Run Ditch and Mining Company which is in evidence, dated December 2nd 1874. It conveys the Indiana Hill claim - the entire claim by name and the metes and bounds.

Then I introduce a patent to the claim from the United States of America to William Judd, James L. Gould and Henry H. Brown dated 31st of July 1873, which is already in evidence.

Next a deed from Oliver Sniffin to William Judd. That is a certified copy I should have said. It is dated September 17th 1866 and it conveys one half of the Indiana Hill claim.

Mr. Hart - This conveys I see an undivided one eighth of the tract of the Mining claim known as the Cedar claim lying in the Gold Run District in Township

Four in the County of Placer State of California, and also one half of the Indiana Hill claim, etc.

Mr. Byrne - Next I offer a deed dated August 2nd, 1866 from William Judd to Oliver Sniffin - a certified copy of the deed which conveys one half of the Indiana Hill claim and refers to it as embracing the ground formally known as the Bome claim.

Next, a certified copy of the deed from Fred. Bome to William Judd, dated the first of August 1866, which conveys an interest in the Indiana Hill claim and conveys all the ground known as the Bome claim. The description is somewhat lengthy.

Next, I offer a certified copy of a deed from J. N. Minor to J. L. Gould dated 27th of August, 1872, which conveys one fourth interest in the Indiana Hill claim.

The Court - Do you mean the present Indiana Hill claim?

Mr. Byrne - Yes. That speaks of the Indiana Hill claim.

Mr. Hart - The one made in 1866 referred to the old claim.

Mr. Cadwalader (~~Question~~ directed to J. L. Gould who is on the stand)
Is there any way that you can give us an idea of the number of acres in the ground claimed by your company?

Mr. Gould - I do not know as I could come very near to it.

Q Well about, say in hundred acres?

A I do not know but the patents there will show - I guess not though.

Q I make it 531 acres.

A That includes the whole of the ground.

Q The ground owned by your company

A - No sir. The patent includes all the ground from the Gold Run claim to the Central Pacific Railroad here (~~pointing on the map~~)

Q That is not what I was getting at. I want to get at the number of acres that your company claims

A The Court. They claim an undivided interest in some of the claims.

Mr. Cadwalader. I want to get at about the number of hundred

acres, whether 400, 500 or 600 acres?

A - No sir.

Q - Well how much?

A - Well it would be only an approximation. I could not tell you.

Q - It would not be as much as four hundred acres?

A - No sir.

Mr. Byrne - It is understood then that those deeds shall go in.

Mr. Hart - It is understood in the first place that those deeds prove their own execution. That they have proper certificates of acknowledgment and so far as I am concerned I do not intend hereafter either to make or combat any point in relation to them.

The Court - You could not make any objection hereafter which would exclude the deed if it were now made.

Mr. Cadwalader - That class of objections we waive.

Mr. Byrne - Mr. Gould you have seen the certified copy of the deed from Mr. Bond to William Judd

Dated August 1st 1866?

A. I have not read it, no sir.

Q. You do not know what ground it conveys?

A. No sir.

Mr. Byrne - It speaks of the Indiana Hill Claim on its face. Do you know what is commonly called the Borne ground?

A. Yes.

Q. Is that embraced within the limits of the Indiana Hill Claim as patented to you by the Government of the United States?

A. Yes, it is.

Q. That is the Borne claim?

A. Yes.

Mr. Hart - Where was that located? Indicate it on the map.

< Witness Indicates as directed >

The Court - It was testified that the claim was located in the north part of the Indiana Hill claim.

Mr. Byrne - Do you know the deed from J. W. Minor to yourself J. L. Gould dated August 27th 1872?

A. Yes.

Q What did that convey?

A. It conveyed one fourth of the Indiana Hill claim as represented on this map.

Q Did you ever see a certified copy of the deed from A. D. Hite to J. N. Minor and H. H. Brown?

A - I believe I have

Q - You know what it conveys?

A. I think it conveys one half of the Indiana Hill claim.

Q As designated on that map.
A yes.

Q Have you seen a copy of the deed from William Judd to Oliver Griffen?

A. No sir. I did not read it.

Mr. Byrne - Will state ^{that} I have examined it and that it conveys one half of the Indiana Hill Claim.

Q Did you ever see a patent from the United States of America to William Judd, James L. Gould and H. H. Brown and do you know what lands it conveys?

A. The Indiana Hill Claim

Q As designated on that map?
A yes.

2. Do you know of a deed
from William Judd,
James L. Gould and
Henry H. Brown to
the ~~Gold~~ Run Ditch and
Mining Company?
Adda

2. What does that
convey?

a. The Indiana Hill
Claim

2. It is dated December
2nd 1874?

Arges.

Mr. Byrne - Is that sufficient
proof as to the ident-
ification?

Mr. Hart - Yes.

Mr. Byrne - Then we
will rest the case on behalf
of the defendants. We probably
will put in an abstract of the
property which will be a
little more full than a
mere mention of the dates
to which Counsel on the other
side have consented as I understand it.

< Recess until Jan. 20th 1882 at
9.30 P. M. > Abstract follows.

1 Defendant then offered in evidence the following de-
2 scribed documents which were admitted without
3 objection on the part of the plaintiffs

4 1. Certified copy of Notice
5 of location of water-right on Bear River by
6 James Cunningham & Co. dated Dec. 5. 1854
7 and recorded Dec 12. 1854 - being the water-right
8 utilized by what was afterwards known as the
9 "Bartlett & Thomas Ditch". Notice recorded Dec 12. 1854

10 2. Certified copy of Notice
11 of location of Water right on South Yuba River by
12 H. S. Walcott and others composing the "Miners'
13 Ditch Company" dated Jan 18. 1870 and recorded same
14 day in Book 4 of Mining Records of Nevada County
15 California at page 645.

16 3. Certified copy of deed
17 from James Cunningham to Benjamin Pollard
18 conveying the whole of the water-right acquired
19 by the location of Dec 4. 1854, together with the ditch
20 and other property connected therewith. Deed dated
21 Jan. 4. 1859 and recorded Jan 8. 1859 in Book # of Deeds
22 page 103, of the Records of Placer County, California.

23 4. Certified copy of Deed
24 from Benjamin Pollard to John T. Thomas and
25 B. H. Bartlett conveying two-thirds of the water-
26 right, ditch property etc. last above mentioned, and
27 dated Jan. 8. 1859. Recorded same day in Book #
28 of Deeds, page 105, of the Records of Placer County.

5 Certified copy of
Deed from Benjamin Tallard to B. H. Bartlett
and John Y. Thomas, conveying one-third of the
water right and ditch property above mentioned
and known as the "Bartlett & Thomas Ditch".
Deed dated May 18. 1859, and recorded May 23. 1859,
in Book F. of Deeds, page 301, Records of Placer
County.

6. Certified copy of
Deed from B. H. Bartlett and John Y. Thomas to
E. M. Hall and Henry Hubbard, conveying the
entire property known as the "Bartlett & Thomas"
Ditch, together with all water-rights. etc Deed
dated July 15. 1865, and recorded same day in
Book I. of Deeds page 404 Records Placer County.

7. Certified copy of
Letters Testamentary issued to W. H. Hubbard
as Executor of the Last Will and Testament
of Henry Hubbard, deceased, by the Probate
Court of the County of Placer, dated Jan. 20. 1866.

8. Certified copy of
Order of Sale of Real Estate made by the Probate
Court of Placer County directing W. H. Hubbard
as the Executor of Henry Hubbard, deceased, to
sell the interest of deceased (one-half) in the
property known as the "Bartlett & Thomas Ditch",
with water-right etc thereto appurtenant. Dated
May 5. 1866.

1 9. Certified copy of
2 Order Confirming Sale of above mentioned prop-
3 erty to Edward M. Hall; made by Probate
4 Court of Placer County and dated Dec. 8. 1866.

5 10. Certified copy of
6 Deed from W. H. Hubbard as Executor of Henry
7 Hubbard deceased to Edward M. Hall, con-
8 veying one-half of the "Bartlett & Thomas Ditch"
9 together with water-rights etc. Deed dated Dec.
10 10. 1866 and recorded Dec 12. 1866, in Book IV of
11 Deeds, page 267, records of Placer County.

12 11. Certified copy of
13 Deed from Osmyn Harkness to Gold Run Ditch
14 and Mining Company, conveying the whole of
15 the mining property known as the "Harkness
16 Claim". Deed dated July 7. 1876, and recorded
17 July 8. 1876 in Book **I** of Deeds, page 598,
18 Records of Placer County.

19 12. Certified copy of
20 Patent from United States of America to Thomas
21 B. Ludlum conveying the mining property
22 known as the "Gold Run Claim". Patent dated
23 Feb. 1. 1876, and recorded March 2nd 1876, in
24 Book **B** of Patents, page 374, Records of Placer
25 County.

26 13 Certified copy of Deed
27 from Fred. Bourne to William Judd, convey-
28 ing all the mining property known as the "Bourne

1 Claim" - now a part of the "Indiana Hill Claim".
2 Deed dated Aug. 1. 1866, and recorded Aug 7. 1866
3 in Book M of Deeds, page 544, Records of
4 Placer County.

5 14. Certified copy of
6 Deed from Oliver Griffin to William Judd, con-
7 veying one-half of the "Indiana Hill Claim"
8 Deed dated Sept. 17. 1866, and recorded Sept 18. 1866
9 in Book M of Deeds, page 704, Records of
10 Placer County.

11 15. Certified copy of
12 Deed from B. Huyck to J. M. Miner and H. H.
13 Brown, conveying one-half of the "Indiana Hill
14 Claim". Deed dated Jan 17. 1870, and recorded
15 Jan 19. 1870, in Book Q of Deeds, page 715,
16 Records of Placer County.

17 16. Certified copy of
18 Deed J. M. Miner to J. L. Gould, conveying one-
19 fourth of the "Indiana Hill Claim". Deed dated
20 Aug. 27. 1872, and recorded Sept. 2. 1872, in Book
21 U of Deeds page 208, Records of Placer County.
22
23
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28

In accordance with agreement
of Counsel, the following, handed
in by witness, ~~Professor~~ P. M.

In the Superior Court of the County of Sacramento
State of California

The People of the State of
California

Plaintiff

vs

The Gold Run Ditch and
Mining Company

P. M. Randall

Witness

Geo. Cadwalader

Counsel

Sacramento Jan 17th 1881

Cross Examination

P 11770 Q. What Current is requisite to transport that material that is 3 inches diameter?

A. Three and twenty one, one hundredths (3.21) miles per hour.

11779

Q What kind of Stone, that is water worn Stone would an 8 Knot Current move on a 40 foot grade?

A. Content 832.25 Spherical inches. Equal to 9.4 inches diameter.

In accordance with agreement
of Counsel, the following, handed
in by witness, ~~Professor~~ P. M.
Randall, is hereby incorporated in
the report as a part of his
testimony.

P 11782 Q. "Now Suppose you double that Current." (Same grade, Randle) "So you make it 16 Miles an hour"?

A. Contenty 11162.2 Spherical inches. - Equal to 22.35 inches diameter.

P 11830. Q. What is the discharge of a Six-inch nozzle under the 375 feet pressure?

A. 1449 Minut Inches under a 4 inch pressure
or 1165. Minut Inches under a 6 inch pressure

P. 11832 Q. What is the discharge through a four inch pipe under a head of 125 feet?

A. This problem is very Ambiguous. the length of pipe not being given. Assuming the length a mile in length then the discharge will be .3322 or nearly $\frac{1}{3}$ of a Cubic foot per Second. But if a nozzle is meant. then, omitting friction through supply pipe, will the discharge be 372.

372 Minus Inches under a four inch head,
on 303.5 Minus Inches under a Six inch head.

P 11842. 2. How you increase the Current to 10 miles
and how what kind of rock will it carry?

A. Contenty 1912 Spherical inches: Equal to 12.4 inches
diameter; Weight, the specific gravity being 2.6,
179.7 pounds.

P 11844. 2. I ask you if a Current of 20 miles
and how will not carry with it fragments
of rock 100 tons in weight?

A — No — The specific gravity being 2.6, then
will the weight be 2364 pounds. Equal 1.182 Tons
and not 100 tons.

P 11846. 2. How much would a rock 29 inches
Square — Cube weigh?

A. 2293.5 pounds.

B. Randall

AlBub
12573
Correct.
(12563)

In the Superior Court
of the State of California
in and for the County of
Sacramento

The People of the State of California	} Morning Session Friday Jan'y 20 th /82
vs. The Gold Run Ditch and Mining Company	

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Winfield J. Davis
Official Reporter

In the Superior Court
of the State of California
in and for the County of
Sacramento.

The People of the State
of California
vs.

The Gold Run Ditch
and Mining Company

Morning Session
Friday
June 20/1882.

Mr. Cadwalader. We offer in evidence
the official map of Nevada County.

Mr. Byrne. I have been informed
that there are some statements
on that map, some statistical
statements that are not correct.

I suppose you refer to the
official map of Nevada Co.

It may be offered however
for what it is worth.

Mr. Hamilton Smith. There are
some misstatements on that
map.

Mr. Byrne. For what purpose do you
offer it?

Mr. Cadwalader. For what purpose

on the face of it.

Mr Byrnes. For all that appears on the face of it.

Mr. Cadwalader. For what appears on the face of it.

Mr Byrnes. That means everything that appears on the face of it. I presume.

Mr. Cadwalader. It is offered for the same purpose that the Doolittle map was offered.

Mr Byrnes. As a diagram of the country.

Mr Cadwalader. As a diagram of the country showing the subdivision of the country and the location of your reservoir lines and canals and the mines, the changes and the population.

Mr Byrnes. As to the statistical matters do you want that in also?

Mr Cadwalader Yes sir, I do not think there are any statistics on the map except as to population.

Mr. Byrnes. Yes, there are other matters.

Mr Cadwalader. I do not know

I want any statistics except as to population.

Mr. Byrne, I have been informed that the statement of the population of the various townships do not agree with the official census.

Mr. Cadwalader, Then we will put in the official census in connection with it.

Mr. Byrne, I am informed that the valuation statements ~~on~~ this map were taken from ^{the} assessment of two years ago.

The Court, You can admit the map and leave out the statistics and you can put in the census and that will supply all you want.

Mr. Byrne, We do not want to be precluded from disputing the accuracy of this map hereafter, if we desire.

Mr. Cadwalader, No, not at all.

Testimony of J. L. Gould

Recalled for plaintiff.

Mr. Cadwalader. Mr. Gould when was the Gold Run Ditch brought in Gold Run?

A. It was brought in before I went there. I went to Gold Run in December 1860.

Q. I mean its present dimensions and the same quantity of water that you were running in 1880 and 1881?

A. It was enlarged in 1871 to 2150 inches from 1200.

Q. In 1871? A. Yes.

Q. When was it enlarged previously?

A. In 1862.

Q. And it was enlarged in 1862 to what number of inches?

A. About 1200.

Q. From what?

A. From about 400.

Q. When was it enlarged to 400?

A. It carried 400 when I went there.

Q. When you went there — that was 1862?

A. That was 1860.

Q. From what streams did it go the 400 inches?

A. From Bear River.

Q. Where did it get the 1200 inches from? A. Bear River.

Q. At the same place? A. Yes.

Q. Where did it get the 2100 inches from? A. From Bear

River and the Yuba.

Q. From Bear River and the Yuba? A. Yes sir.

Q. When was the connection made with the Yuba?

A. In 1870.

Q. The Gold Run Company was a Corporation of which you were one of the Corporators?

A. Yes.

Q. So was Thurman the Superintendent of the Polar Star, was he not?

A. He is the Foreman of the Polar Star.

Q. He was one of the Corporators? A. Yes.

Q. So was the witness Brown who testified here one of the Corporators?

A. Yes.

Q. Who did the Company buy that ditch from? A. From Hall

and Hubbard.

Mr Byrnes. Do you mean the Gold Run Ditch and Mining Company.

Mr. Cadwalader The Gold Run ditch.

Mr Byrnes. It did not buy that ditch from Hall and Hubbard?

A. It bought it from the Miners Ditch Company.

Mr. Cadwalader. They bought it from the miners Ditch Company?

A yes.

Q. Whom did the Miners Ditch Company buy from?

A They bought from Hall and Hubbard.

Mr Byrnes. They bought from Hall did they not — all these things are in evidence.

A yes.

Mr. Cadwalader. What was paid for it?

A \$50,000⁰⁰/₁₀₀

Q. How did Hall and Hubbard get it?

A They bought of Bradley and Thomas.

Q. Didn't they obtain it through a foreclosure? ans sir.

Mr Byrnes. Subject to this. It is irrelevant and immaterial.

The Court. ~~Will~~ I suppose that must appear from the documents. Mr. Cadwalader. I want to show what the real consideration was.

Mr. Byrnes. I object that it is immaterial and irrelevant. The record evidences of this title are before the Court and they show the manner in which this property pass from the original locators down to the present owners.

Mr. Cadwalader. The consideration named in the deed is simply prima facie.

Mr. Byrnes. What is it that you want to show?

Mr. Cadwalader. I want to show that it was bought by Hull and Howard for \$24,000 or thereabouts and that it was sold to the Miners Ditch Company for about that price.

Mr. Byrnes. We object to that. It's irrelative and immaterial. If it had been sold for 24 cents it would be entirely irrelevant in this case.

The Court. Will it not have some bearing on the ^{value of the} ~~other~~ property?

Mr. Cadwalader. That is it; to show

that its value was comparatively insignificant.

Mr. Byrne, the witness has stated that the present company paid \$50,000 for it and that they afterwards paid \$50,000 for enlarging it. Is it competent now to go back years ago and show what has been paid for that property? If he can show that the present company has not paid and expended those amounts - as the witness has stated - that is very well.

Mr. Cadwalader. Give me the deed of the Hull and Hubbard.

Mr. Byrne. I can not. I have not it here. I will furnish it to you later, but I can not give it to you now; because I have not got it.

Mr. Cadwalader. We want to show what the property was reasonably worth in the ~~market~~ ^{market}.

Mr. Byrne. When?

Mr. Cadwalader. At those various periods in the history of the ditch. They set forth in their answer that the property is

of great value and they fixed a value upon it.

The Court. You may ask him if he knows personally about it.

Mr. Cadwalader. Will you send for those papers?

Mr. Byrne. I have no one to send for them now; but I will furnish them to you hereafter.

Mr. Cadwalader. Was the Gold Run Company the successor of the Miners Ditch Company?

Ayes.

Q. They were about one and the same thing, were they not?

Ayes.

Q. It was more like a change of name than anything else?

Ayes.

Q. Was not the property bought by the Gold Run Company for stock?

Mr. Byrne. What property do you refer to?

Mr. Cadwalader. The property of the Miners Ditch Company. Was not that bought by the Gold Run Company for stock.

Mr Byrne. Subject to that. It appears to me that this question was asked before on the cross-examination and was unanswered. The Court. I do not recollect of any such thing.

Q. The Miners Ditch Company was incorporated under the name of the Gold Run Ditch ^(and mining) Company Mr Cadwalader. It was a mere change of name? I want to know whether the property, the Miners Ditch Company was not paid for by the Gold Run Company in stock?

Mr Byrne. Subject to that. It is immaterial. It does not make any difference what they paid in.

The Court overruled the objection.

Q. Yes I suppose so.

Mr Cadwalader. No money was paid? A No.

Q. The Gold Run Company bought the principal part of these claims from its principal stock holders and incorporators, did it not?

A. We bought some of them from some —

Q. Int'y. > Well the principal part of them.

Mr. Byrne, Subject to this style of examination. This is his witness and he must ask proper questions of him.

Mr. Cadwalader. From whom did the Gold Run Company principally buy its mining ground? A. It bought of various parties.

Q. But principally?

A. It bought of Clarkness.

Q. Was Clarkness a corporation?

A. No sir.

Q. A stockholder? A. No sir.

Q. Well Clarkness is one who else?

A. It bought of Taylor & Co. They were not stockholders at that time.

Q. I am asking you about the persons who were officers of the Company or stockholders of the Company?

A. It bought of Mr. Knicker.

Q. Is he an officer or stockholder?

A. Yes.

Q. Were you an officer and stockholder?

A. Yes I was a stockholder.

Q. And officer? A. Yes.

Q. And Mr. Brown?

A. Yes.

Q. Who testified here?

A. Yes.

Q. And Mr. Harriman?

A. Harriman used to be a stockholder but not when they bought of him, he was not a stockholder.

Q. Can you state whether or not the principal part of your ground was not bought principally from your ^{principal} stockholders?

A. I should say that the majority of it was.

Q. What do you say about the ditch property? was that bought in the same way from the principal stockholders?

A. Yes it was bought of the Miners Ditch Company.

Q. Well, they were the same persons who were the principal

pal stockholders in the Miners
Ditch Company? Ayes.

2. The considerations named in the
deeds I suppose were merely
nominal?

A. I think the considerations
were all correct ~~with~~ for the
plans. The deed for the
ditch is not correct. It calls
for less than the amount.
That ditch was bought in
December 1867 I believe.

2. By whom? A. By the
Miners Ditch Company.

2. For how much?

A. For \$30,000. It was made
out in the spring, I think in
April and there had been
a certain amount paid on it
and they got the deed for the
amount that they owed at
the time. The deed was given
for less than the amount paid
for the property.

2. They bought from Hall
and Hubbard, did they not
of Auburn?

A. Yes they bought from Hall.

Q, Hull obtained his title by foreclosure did he not?

A, No sir he did not foreclose.

Q, What did it give Hull do you recollect?

A, I could not state the exact amount; I think about \$40,000.

Q, Was it not about \$18,000?

A, No sir.

No Cross-Examination

Mr Byrnes. It is admitted here by counsel, for the plaintiff, that the records of the Gold Run and Indiana Hill Mining District have been lost or destroyed and that they can not now be produced.

Testimony of

Marion Biggs.

Called for plaintiff sworn.
McHurt. Where do you reside?

A. In Butte County, sir.

Q. How long have you resided there?

A. I have been living permanently there since 1868, sir.

Q. Since 1868?

A. Yes sir.

Q. Where, with reference to the Feather river?

A. My land is right on the bank of the river. My house is half a mile from the bank of the river.

Q. How far from the town of Biggs?

A. I am four miles to the northeast of Biggs.

Q. When did you come to California?

A. I first came here in 1850.

The 8th day July 1850 I arrived at Sacramento, across the plains.

Q. How long have you been acquainted with the Feather

River? Well, I was there in 1850; but I have been tolerably intimately acquainted with it since 1863.

2. What was the character of the river in 1850, sir?

Mr. Belcher. We object, that it is not in rebuttal as to the character of that river. They introduced some testimony in regard to that river in their direct-examination. We have not gone into the character of that river at all. Hence we say it is not in rebuttal if they examine now as to the character of that river in any respect.

Mr. Hunt. We expressly, in our case, confined ourselves to the American River and their forks and when it was sought on the other side to cross-examine a witness in relation to the Feather River up towards Marysville and in relation to the Sacramento River above the mouth

of the American, we then objected upon the ground that it was not in cross-examination but that we had confined our case to the American River and to the Sacramento River south of the mouth of the American. And we said at that time expressly, when they insisted upon cross-examining the witness, that we did not desire it to be understood that we opened up any question in relation to debris or mud that came into the Sacramento River through the Feather or the Yuba or any tributaries of the Sacramento River excepting the American; and it was understood that we were not opening up that question and that they were permitted to examine in relation to the upper rivers simply with the view of determining whether or not the leveeing along the banks of the Feather River had the effect to raise the water at the

points in the Sacramento River south of the City of Sacramento. That was exactly the position taken by them, and your Honor allowed it for that purpose and for that purpose only. They then introduced proof and undertook to show that the mines along the banks of the Feather River did not cast any debris in the streams since the time when hydraulic mining was commenced. We desire to show now that the Feather River, in 1850, was a clear stream and that it remained comparatively clear until the commencement of hydraulic mining along its banks; and that after hydraulic mining did commence, it became very muddy; but that after hydraulic mining was stopped by injunction that it became again comparatively clear, destroying the effect of hydraulic mining on that stream by the habits, conduct and action of the stream itself. We think

it is perfectly proper for us to
 do that - as contradicting to some
 extent the testimony of Mr. O'Brien
 and those who have sought to
 show that the debris thrown into
 that stream now does not come
 down. We can show that it
 does come down. They attribute
 it to the natural wash. We
 desire to prove this also as
 demonstrating that the natural
 wash has had no effect on
 any of the tributaries of Sacramento
 River. We did not go into the
 above natural wash originally
 at all. It seems to me that
 this is proper rebuttal; and,
 aside from that, even if it were
 not exactly in rebuttal, the im-
 portance of this case is such
 that no little quibble should
 ever be permitted to interfere
 with the trial of the case
 on its full merits. The admission
 of testimony in rebuttal is a
 matter that is within the dis-
 cretion of the Court and it is
 made so by the express language

of the Company. But we think that this is proper rebuttal. as tending to disprove some of the facts that they attempted to prove.

Mr. Belcher. They undertook to prove, on the part of the plaintiff, in the first place, the mining upon the American River and the filling of the American River and the filling of the Sacramento River and the obstruction to the navigation of the Sacramento River and if they confined themselves to the American River and had given no proof further than of the American River or no proof had come from any of their witnesses that there had been any mining or any source of filling of the Sacramento River other than from the American River, it would have been proper and competent for us to have shown that a portion of the filling came from other rivers than

on the American and it would have been strictly in answer to the case which they made.

I understand the rule in regard to rebuttal to be this: The plaintiff makes his case; the defendant follows to contradict the case which the plaintiff has made. If he does nothing further than that, then there is no rebuttal. Now the proof which we made in regard to the sediment which came from other rivers than the American River, was simply to meet the plaintiff's case and so far as we went into that, they have no rebuttal at all. We have introduced no proof as to the Feather River other than simply to meet the case which they made.

Mr. Hart, We introduced no proof in regard to the Feather River and none came out from our witnesses except on cross-examination.

Mr. Belcher saying that if you

hadn't introduced any proof
 as to the Feather River or the
 Yuba or the Sacramento above
 the mouth of the American
 but if you had confined your-
 selves entirely to prove that
 the Sacramento River had been
 filled with sediment that the
 navigation of that river had
 been destroyed and that the
 land along its banks had
 been destroyed and that the
 health of the people in this
 City had been ruined, as you
 say, by the filling up of
 those rivers - the Sacramento
 and the American - if you
 had confined yourselves entire-
 ly and exclusively to prove
 as to mining upon the Amer-
 ican River, still it would
 have been competent for us
 to meet your case and to
 show that $\frac{9}{10}$ of the sediment
 which is deposited in the
 river came from other sources
 than the sources which you
 have mentioned. That would

have been simply meeting their case. But I started in to state what I understood the rule to be. It is simply this, that so long as we meet their case, they have no rebuttal.

If we undertook to make a new and independent case for ourselves in defense, then they may meet that new and independent case in rebuttal.

Of course the whole thing is within the discretion of the Court, because if they have forgotten some matter, that the Court thought important, the Court has the right in its discretion to allow them to introduce it even after the case is closed. But I think to allow them to go into the case or into any new and independent testimony in support of their case would be to allow us to meet it. We have the right to answer the case they make. If the Court should allow they to go

into this, it would open the 12674
case for a new trial of this
question into which they pre-
pare to go. We must have an
opportunity to meet them.
Hence we object to it and say
that it is not in rebuttal. And
as suggested by Mr. Byrne
there is no issue in the
pleadings to which this is
responsive. They might have
made an issue on it in the
original case by showing that
the Sacramento River had received
material from the American
and from the Yuba, the
Bear, the Feather River,
and from the upper Sac-
ramento but they ^{have designed to} confine them-
selves strictly and entirely
to the American and we
have simply met their
case.

Mr Hart The evidence, we
 think is in rebuttal of
 his propositions. Counsel's
 argument if correct would
 establish that there could
 be no rebuttal in any case
 except where there was
 affirmative relief asked
 for by defendant. I do not
 understand that to be the
 rule. We introduce in evidence
 a fact - that is we intro-
 duce upon the stand wit-
 nesses who testify for
 instance that certain property
 was stolen by John Jones
 Now if Counsel's argument
 be correct it would be necessary
 for us to prove that it was
 not stolen by William Jones
 or that it was not delivered
 to John Jones by William Jones
 We introduce in evidence
 the facts which tend to
 establish that case. They
 come in in their defense
 not by denying the fact that
 they have done this thing -

not by denying the fact that these materials came down here; not by denying the fact that these materials filled the rivers up; not by denying the fact that they are running a hydraulic mine up there nor by denying the fact that they deliver their material into the stream; but they say that a great proportion of this thing is done by natural wash on the banks of the Feather River, and they seek to defend themselves against the case which we have made by introducing evidence tending to establish that the Feather River is the one that is doing the mischief and that the American River therefore does not do it. Now, I say that they seek to answer our case by the introduction into this case of affirmative matter which

it was not necessary for
 us to introduce proof upon
 until they had made their
 testimony of that affirmative
 matter which may amount
 to a denial of the allegations
 in our Complaint. When
 they had introduced this
 evidence tending to show
 that this was not done
 by the American River
 but that on the contrary
 it was done by the Feather
 River, it was competent
 for us to deny the fact - to
 deny the affirmative fact
 which they sought to prove
 in this case as being in
 conflict with the evidence
 which we had given in
 our original Case. Therefore
 I say we might prove in
 answer to what they have
 said first, that no debris
 does come down the Feather
 River at all, and certainly
 that if debris does come
 down the river it comes

from the same general source and the same general source as that from which the debris comes down the American river. We may account for the debris that comes down concerning which they have introduced testimony in this case, not having an affirmative defense, asking for affirmative relief, but as affirmative facts which they seek to prove in order to make a conflict between those facts and the facts that were originally proven by the plaintiff in this case. We might prove, I say, in answer to that, that it did not come down first; we might prove in answer to it second, that if it did come down it came, not from natural causes, but from hydraulic mining.

Now in addition to that they have introduced a vast amount of evidence

in this case, in which they
 seek to show that this comes
 from natural causes, the
 introduced in evidence as
 establishing a prima facie
 case evidence tending to
 establish, first, that they
 put this material into the
 stream; Secondly that material
 of that kind came down the
 stream giving the amount
 and quantity, the amount
 and quantity left up there
 and the amount of fill in
 the Sacramento River and
 we rested upon that as a
 prima facie case. Now
 they come into this Court
 and they say to your Honor;
 "This might be true were it
 not for the fact that a
 great proportion of the amount
 of this debris that comes
 down the stream comes
 from natural causes".
 And they introduce before
 your Honor an immense lot
 of testimony in relation to

The drainage area of the
 American river, undertaking
 to account for some of the
 debris that comes down the
 river from that cause.
 We may contradict that
 cause now because it did
 not become necessary for us
 and it never becomes necessary
 for a plaintiff in a case
 to anticipate a defense
 which may be based upon
 proof of affirmative matter,
 though it may not constitute
 an affirmative defense within
 the proper meaning of that
 term; it never becomes
 necessary for us to negative that
 which might be true under
 some circumstances. It did
 not become necessary for us
 to prove, in other words,
 in the outset that this
 did not come from natural
 causes, but it became only
 necessary for us to prove
 primarily that it came from
 the causes alleged in the

Complaint.

They then introduced a vast amount of evidence in relation to the drainage area of the Feather and of the Sacramento River; they sought to compare those drainage districts with that of the Po and other rivers in Europe, undertaking to establish by comparison that a great amount of this debris came from natural causes up there. Now I say that we may introduce before your Honor evidence tending to establish that this did not come down the Feather River from natural causes; that when they introduce before your Honor an illustration of that which they believe to be true, that is that this was the wash of natural causes, that they proved to your Honor then simply the habits of a stream which was yearly

and daily filled with this debris thrown into it from hydraulic mines. That being true, is not that a contradiction of their theory? Then we prove it comes from hydraulic mines. They then come in with affirmative matter and say ^{in the} first place, it does not come from hydraulic mining, and they say secondly it comes from another source. We introduce then before your Honor evidence showing that it does not come from that other source, but on the contrary, the other debris which they have introduced in evidence, comes from hydraulic mining the same as the debris that comes down the American river. That is the object of this and I say that it contradicts two theories of their case both of which are based upon affirmative evidence, new matter

brought into this case
which they believed tended
to contradict the case made
by defendants.

< The Court, after argument,
overruled defendants' objection.

Mr Badwalader Your Honor
allows us to prove
the regimen of the
river antedating mining.

Mr Belcher That was their
original case upon
which they did introduce
proof, and it is not in
rebuttal.

Mr Start Will ask Mr
Biggs another question.

The Court (int'g) I do not
see the importance of
that. It sufficiently
appears from the character
of the evidence here,
I think.

Mr. Hart. I will ask Major Byggs another question then.

Are you acquainted with the Cherokee mines?

A. I am acquainted with the Cherokee, and Spring Valley Consolidated, known as the Spring Valley. Is that what you have reference to?

Q. Yes. How long have been acquainted with that mine?

A. For quite a number of years; I can not say how long.

Q. On what stream is it located?

A. It is located upon what they call Saw Mill Ravine, but close to Dry Creek.

Q. How far is that above your residence in Butte County?

A. It must be some 50 odd miles.

Q. How far is it from the bank of Feather River?

A. I would think at the point where they have been mining it was some 12 or 14 miles.

I have been over it repeatedly

But do not know the distance exactly. I do not expect to be called as a witness in this case until this morning when I met you. I would have given the exact distance had I known I would be called as a witness.

2. Do you know anything about the canal that has been constructed by the Spring Valley Company? A Id.

I know long have you known that canal? A That canal has been constructed quite a number of years. I was there when the contract was let for building it.

I know long ago was that?

A I cannot not say. I have not changed my memory nor looked at any dates. But it has been built quite a number of years.

I where does the canal run from or to?

A It runs from the mine or perhaps from Dry Creek, down across the adobe land,

North of the Butte Mountains.

What stream does it empty into? When the waters are up it empties into Butte Creek and from there into the Sacramento. Dry Creek, the original flow of that - is filled up entirely. There is no channel there at all.

Mr Belcher We move to strike that out as not responsive to the question.

Witness I was going on to state what the canal was built for.

Mr Belcher You need not state what the canal was built for, particularly when not asked.

Witness I merely wanted to give a statement of what occurred.

Mr Belcher You can answer the questions without volunteering.

Witness I was endeavoring to explain so that the Court

cannot understand. That way
all. If I do not strictly
answer the questions I will
take it as a favor for Counsel
to check me, as I do not
want to answer any ques-
tions improperly.

Mr Hunt. Do you know Butte
Slough? A. I have a
slight acquaintance with it.
I have been over it a number
of times.

Q Do you know whether Butte
Creek empties into Butte Slough?

A. I cannot not say.

Q If it does, do you know
where it must empty.

Mr Belcher Objection: that
the witness says he does not
know whether it empties into
it at all or not.

A. I cannot not say.

Mr Hunt Does it empty above
Parker dam?

A. I have been to that dam,
but have paid no attention
to it. I have had my cattle
running there several years

but paid no attention to it

Q You do not know?

A No. I know nothing about it. I know where Butte Slough is, and where Parks dam is, but I do not know anything about the matter asked me

Q Do you know anything about some dams or reservoirs constructed by the Spring Valley Company, for the purpose of catching their tailings?

A. I know they have dams for the purpose of catching or restraining their heavy tailings. There have some reservoirs near their mines.

Q What kind of dams or reservoirs are those if you have seen them?

A Well, I never paid any attention to them at all.

Q What kind of tailings do they catch? A The heavier gravel, and then the solution runs down the canal

Q What kind of material is turned into the canal?

Q Gravel, Sand and all kinds of rubbish from the Mines.

Q Do you know what kind of material they are working in the Spring Valley mine now? A I think there is a good deal of Chalk or Pipe Clay.

Q What else?

A Gravel; some soil; some red clay - a kind of light melatto soil, which is natural in the upper portion of the mine. There seemed to be different proportions of soil, different colors.

Q Do you see any blue cement there?

A There may be some. I could not say. I have not been to the mine for a couple of years. I am on the Canal every day or two.

Q At the time you were there was there any very considerable proportion of blue cement as compared with the balance

of material, in the bank.

Mr Belcher Objection: That that is immaterial so far as the Cement is concerned, what he may have found at that mine.

Mr Hart. You proved it was all blue Cement.

Mr Belcher No such thing, we proved by Mr Robinson just what Major Byss has now stated.

Mr Hart. I guess not. Some testimony in regard to all of those claims, but nothing but this kind of stuff in them.

Mr Belcher Nothing of that kind was said. And nothing was said of these particular mines except by one witness The Court. But that does not determine whether this evidence is admissible or not.

Mr Hart. I want to find out what kind of stuff goes down that canal.

Mr Belcher In other words, Counsel wants to open his

Case again
The Court. No. As I understand it, you put in some evidence as to the extent and character of this material, as well as its productiveness.

Mr Belcher Yes sir. Now if counsel wants to prove, that in any of the localities where we proved it was productive, that it was not, that is one thing.

The Court. He not only desires to prove that, but to show that it was a different character of material. I presume Mr Hart. And in addition to show that that stream did not go clear when it got to Butte Creek, as they have evidence to show it did: as clear as when it first left the pipe.

Mr Belcher That is a question you can ask directly whether he knows.

The Court. I suppose it will be just as much in point,

to show, that it was a different character of material from that you have charged, or to show that it was not production. Proceed.

Ex.

Mr Belcher We except Witness I think not. Mr Hunt, How long ago do you say that was?

A. I was there two years ago the last time I was at the mines.

Q Did you see any material there like you see in box No 2?

A We see a great deal of that material coming down the canal, of that color; not quite so much gravel in it, what you might possibly term shakers. I hardly know the true meaning of that.

Q Does any gravel come down in addition to the other material which you speak of?

A No heavy gravel gets that low down yet. (Very little gravel, there is some

Sand.

Q I understand you to say that most of the gravel is caught in the first dam?

A Yes. There is no heavy gravel has got that far down. Some of the smaller gravel has got to Dry Creek Bridge.

Q Is there any gravel at all that goes over those dams and down through the Canal? A Some of the smaller gravel perhaps — like this and this (showing) — smaller pieces.

Q Smaller pieces of gravel go over both the dams and down through the Canal?

A Yes.

Q How far? A I think the most of it stops at what is known as Dry Creek Bridge.

Q Where is that located?

A East of Nelson's station.

Q How far from the mine?

A I suppose 10 or 15 miles.

2- Did you notice the deposit immediately above the second dam?

A. I did not.

2- You did not notice it?

A. No.

2- You do not know what it is composed of?

A. Of course it is composed of rubbish from the mine, debris from the mine and rock.

2- Above the second dam I mean.

A. I could not say, not expecting to be called here. I paid no attention. I did not look at it all, only driving through there and around the mine in a buggy and on horse-back. I am more familiar with the canal and what runs down west of Big Station than anything else about the mine.

2- Now how much material do you say is carried through the canal?

Mr Belcher Objection: that as

to how much material is carried through the canal is not a question that we went into nor a question that they can go into on rebuttal. It is not in rebuttal of any matter that was proven by us. And now on the amount of blue gravel, I read here from the report, which I think is correct, of the testimony of Robinson, who was the only witness in that regard, where he says, "They are working in the hard gravel but have not as yet mined deep enough to get to heavy blue gravel." That is what he says; there is nothing about blue gravel.

Mr. Cadwalader - Robinson was not there when the mine was in operation. He did not go there until after this suit was commenced.

Mr. Belcher - Then we say you have no occasion to go into this matter.

Mr. Hart - Robinson stated in his testimony that that canal carried water of such character that when it reached Butte Slough - A point we expect to show it

never did reach - it was as clear as when it went through the pipes at the mine. That is what we desire to contradict.

Mr. Belcher - You may ask that question directly, if this witness knows.

Mr. Hart - I do not desire to ask it directly.

The Court - I think Mr. Robinson did give his idea of what was put in these two reservoirs or ponds which he described.

Mr. Belcher - Yes. And then he stated as to the slickens taken out on certain lands and when the water came into Butte Slough.

The Court - I think this may tend to contradict him, and allow it. Of course I can not dictate as to the form in which Counsel shall prove it.

Mr. Belcher - We except.

A. I could not say. There is a vast quantity of it; enough to ruin that whole country if it is not stopp'd. That is all I can say about it. I never measured

it.

Mr. Hart-Describe the character of the water as it runs through the canal.

Mr. Belcher-Objection: that that is not in rebuttal - to describe the character of the material as it runs through the canal.

The Court-It is evidently the same question we discussed before, as to what is carried in the canal.

The Witness- Shall I describe the water?

The Court- Yes.

Mr. Belcher- We except.

A- Well it looks to me just like if you take various kinds of clay and various soils and stir it up as thick as you could stir it with a stick, about like honey; that it is not fit for man or stock. I have been at the reservoirs and there the water is clear.

Q- The water is clear at the reservoirs?

A- Yes. But when it comes down that canal it is so thick that you can stir it with a stick and

see the waves of it, more like syrup.

Q What?

A So thick you stir it like syrup or honey.

Q How far down the canal have you seen this material?

A Down to the mouth of the canal.

Q How far is that from the mine?

A From the mouth where it empties you can see it for ten miles.

Q For ten miles from the mine?

A No., For ten miles from the mouth up; Yes, 15 miles. The water running it is thick all the way from the time it leaves the mine and goes over the first dam. The balance they have there is this thick solution which is running down.

Q How far does it run in that way?

A It runs down nearly to the Buttes and there it spreads out over the country. And there it lies unless there is some high freshet like we had last February that converges it on Butte Creek

and elsewhere.

Q. Is it North of the Buttes or North and west?

A. I would suppose it was about North.

Q. You say the water spreads out there?

A. Yes. All over the country.

Q. When? Summer time or Winter time?

A. In Summer and Winter both. The mine runs all the time.

Q. Is there no current to carry this away after it spreads out?

A. No.

Q. How much country has been covered by that slickens from that mine at that point?

Mr. Belcher - Objection: that that is not in rebuttal. If there had been five thousand acres covered there it is not any matter in rebuttal.

The Court - I think Mr. Robinson attempted to show that nothing was carried in that canal except the very finest material.

Mr. Hart - And that it came out

at Butte Creek clear. He said he traced the water from the mine down to the point where it went into Butte Slough and it was as clear as it was when it ran through the mountains.

Mr. Belcher. But this does not tend to prove the contrary. It does not even tend to prove the contrary. Suppose it had covered ten thousand acres there, this would not have any tendency to contradict it.

The Court. I think I will allow it. I think it shows what was the color. I think I will allow it.

Mr. Belcher. We except. I would like to ask further, does the Court admit it as a matter of discretion or a matter strictly in rebuttal.

The Court. I suppose in rebuttal.

Mr. Belcher. Then we take the exception that it is not in rebuttal, and it is not placed on the ground of discretion. I would like to have that so appear on the record.

As I could not say, There is a

very vast quantity of it. I have never measured it but have taken notice of it, in riding around, as far as I could see and take observations.

Q - Could you make a general estimate?

A. No estimate. There will be gentlemen here who will know exactly how much has been destroyed.

The Court - There is nothing in the question about destroyed.

The Witness - Well, covered up. If the Court will please excuse me, it is a word we have got to using up in that country.

Mr. Hart - Do you know whether or not it is true that farmers are using that slickens from that canal as a fertilizer in Butte County?

Mr. Belcher - Now that we say is objectionable as not in rebuttal unless he confines himself to the very parties by whom we have made the proof that they used it.

The Court - I think you put some such question. I think I will admit it.

Mr. Belcher. We except.

The Witness. At one time Keppel and some other parties tried to fill up some low places - lakes - with these slickens, but I think they have abandoned that idea entirely. I know of no person now who is using it. Ham's attempted to fill up some land that was a kind of hog-wallow, some low places, to make the land level and keep the water from standing on it.

Q. What do you mean by "hog-wallow land"?

A. Low land, a kind of basin, where it is higher around the edges than in the center. It was the clear surface water that stood on that in very wet season. There are numbers of persons who put some of these slickens on such land as that to fill it up and keep the water from standing on it.

Q. Do you know whether or not the slickens over the land is a fertilizer?

A. Well not being a scientific or

profound geologist, I have never been able, from my study of geology, which is but very limited, to see that there was anything in pipe clay or the stuff that was coming from those mines that was calculated to add to the improvement of soil, with this exception: the adobe cracks, and if you will take tow or flax and stuff into those cracks to keep it from drying out and the wheat from suffering from drouth it will be an advantage probably. It fills up those cracks and may be an advantage that far.

2. I asked you whether or not the slickens coming from that mine is a fertilizer and what effect it has on the lands and crops?

As far as it is on my land - this heavy sand - I will give any man one hundred dollars an acre to make it as good as it was before it came on it. I will give any gentleman one hundred dollars an acre.

who will give good bonds to reclaim it and make it as good as it was before it was put on it; that which was destroyed by the slickens or sand from the mines.

2. You know whether Mr. Posey mentioned your land as land which was covered with slickens ten feet deep and benefitted thereby?

A. It was so stated and I asked Mr. Posey where the land was that there was sand ten feet deep deposited on in 1862 and that in a year produced a good crop. He stated it was on my farm or ranch where a man by the name of Dick Lortow had a garden. Now that land I had manured.

Mr. Belcher- This we object to as not proper at all.

Mr. Hart- Go on and state the facts in relation to the effect of this sand upon your land, mentioned by Posey.

Mr. Belcher We object on the ground that there has been no question made in regard to the effect of sand in connection with that land at all. The only proof that was offered by the witnesses called in that regard was as to the slickens.

The Court- Did not I understand your witness to testify in regard to this very piece of land, that it had been improved by the deposit?

Mr. Belcher- That a piece of land had been.

Mr. Hart- No. That Major Biggs' land had been.

The Court- This precise piece of land.

Mr. Hart- Posey stated it had been filled ten feet deep with sand in 1862.

The Witness- In 1862, I think his evidence was.

Mr. Belcher If we called out any such evidence as that it is something I have no recollection of. The other side called it out

on cross-examination, as an independent and new matter; and when a party calls out evidence of that kind on cross-examination he must abide the result and it is not open for him to go into rebuttal and disprove it.

The Court- I really do not remember whether this was called out on cross-examination or not, I think, General Hart, you may ask the witness the question propounded.

Mr. Belcher- Our objection is that it is not in rebuttal, and I understand the court to make its rulings that it is strictly in rebuttal and not a matter within its discretion?

The Court- Yes.

Mr. Belcher- The except.

The Witness- The land has been worthless. I manured it and tried vines and raised a few vines on it by heavy manuring. But it has been worthless.

2 How deep was the sand deposited on that piece of land in

1862?

A- I saw there in 1863 on the land I suppose perhaps four or five feet deep. There never was ten feet.

Q How often have you undertaken to cultivate it?

A- I have tried to cultivate that land since eight or ten years but found it worthless and let it grow up in willows.

Q Will willows grow on it?

A. Willows will grow on ^{almost} any sand I have seen.

Q How often have you manured it?

A. Since three or four times.

Q What have you tried to raise on that piece of land?

A. I tried corn and it burned up. I tried barley and wheat. And I raised a few squashes on it, the last I attempted to cultivate it,

Q Would it raise squashes?

A. I raised some few squashes on it, very small ones. They were burned up mostly. There were very

few there.

1 I manured it very heavily and plowed in the manure.

2 What kind of land was that before the sand was deposited on it?

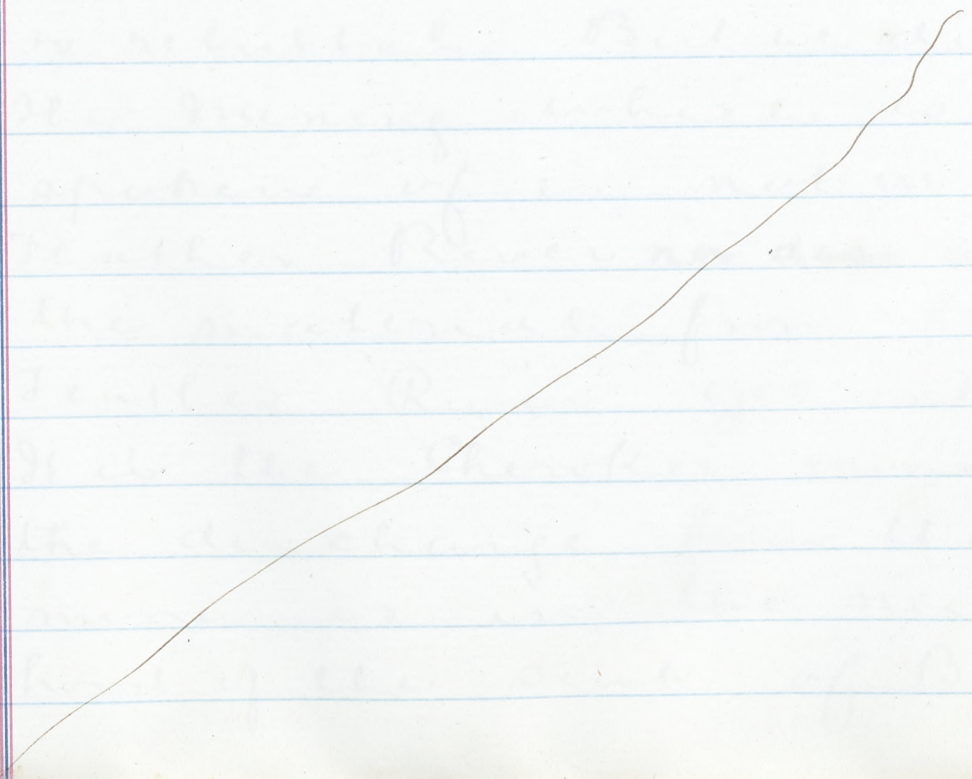
A. It was rich bottom land, river bottom land.

2 How much would it produce to the acre at that time?

A. I can not tell.

2 Where is that land located with reference to the Feather river?

A. That land is on the West bank of the Feather river, it lies out from the river some short distance.



© I will ask you whether or not there are any mines located on the banks of the Feather River above your home in Butte County.

Mr W C Belcher So that we make the objection that it is not in rebuttal. We have offered no proof in regard to the mines on Feather River and if we had, then it would have been only to show that whatever there was in the Feather River might have produced the filling in the Sacramento River and it would not have been in rebuttal. But we did not the mining which is here spoken of is not on the Feather River ~~nor does any of~~ the material from the Feather River get into it. It is the Cherokee mine and the discharge from that mine is in the neighbor hood of the sink of Butte

Creek where it spreads out.
Mr Hart Into Butte Creek.

Mr Belcher I did not say so.

Mr Hart I said so. Mr
Belcher and I had a con-
 versy about that once and
 he has never got over it
 The object of this testimony is
 to show that there are certain
 mines that are tailing into
 the Feather River. Now they
 have introduced some proof
 in regard to the drainage
 area of the Feather River
 and as to the amount of
 sheep and the amount of
 cultivation and the number
 of streams running into
 the Feather River. The
 inference from that of course
 is that it was introduced
 to make a primary case
 or a prima facie case
 that all this stuff that
 comes down stream comes
 from natural causes and
 indeed they have introduced
 very many witnesses as

to the American and numerous
other streams down in the
lower part of the State.
I desire to prove by this
witness at this time that
there is a large mine
located near the town of
Orville on the Feather River
that has been running there
for some time; that during
the time that mine was
running there the river
was very much like what
the witness has described
the canal as being, the
canal of the Cherokee mine
that it was filled with
pickens and slumgullion
so that it was nearly thick
enough to be stirred with
a stick, as he says. That
mine was afterwards enjoined
and during the pendency of
the injunction suit and while
that mine was not in operation
the water became comparatively
clear so that you could
see down beneath the

surface for some distance,
 as tending to prove that the
 stuff that comes down that
 stream does not, as they
 undertook to prove, come
 from natural causes, but,
 on the contrary, comes
 from those mines

The Court I do not think
 that is proper in rebuttal
 I will sustain the objection.

Q What are except.

Q Have you ever noticed
 Butte Creek in the winter
 time or when the water
 was high at a point below
 where this canal puts into
 it? A I have not

Q Have you seen the land
 upon Butte Creek for any
 considerable distance from
 the mouth of the Canal?
 A I have not

Q You have not seen the
 land for any considerable
 distance? And sir, not
 for any considerable distance

Cross Examination of Marion Biggs

Mr Belcher Q Major, the adobe cracks considerably in Summer.

A Yes, in some localities where it is not cultivated

Q Have you been in the habit of filling the cracks in your adobe with tow?

A I fill them with anything I can get a chance to

Q Haven't you filled them with tow?

A No sir but I go on the principle that anything that keeps out the air keeps it from cracking.

Q And these cracks are several feet deep?

A Where the land is not cultivated you can run your hand down this way & indicates > and the more it is cultivated the less it cracks

Q Now I want to know how many acres, Major, you

said you manured?

Ayes I have manured

Q. How much land did you manure? A I could not say for how much. I have some adobe land. Does it an acre?

A I manured a portion of my land. You are aware that no man keeps the run of the number of acres that he manures. I cannot tell you the number of acres that I have manured. I use all the manure I have. I do not allow any to go to waste from the 35 or 40 horses and all my milk cows. I save it and put it on my land.

Q. How many acres do you manure?

A I could not tell. So far as I have manure I scatter it over my poorest land, the most worthless

Testimony
 of G. F. Allard

Recalled for Plaintiff in rebuttal

Mr. Cadwalader Will you look
 at that and state whether you
 made it? A Yes.

I state what it purports to be
Mr. Belcher Let us see it

Q. It is a profile of the
 North Fork of the American River
 from Pickering's Bar to Lees Ferry
 constructed from the data contained in
 El Reno's table which has been made
 an exhibit in the case, made by
 G. F. Allard. There are explanations
 on it

I does it show the grade of the river as
 given by Mr. Reno?

Mr. Belcher I object to that. It is immate-
 rial and it is not in rebuttal

Objection overruled and defendant's

Ex Except



Q State whether it shows a surface grade, the present surface grade of the stream between those points in the sections as given by Mr Uren?

A It does.

Q Does it also show the fills in those —

Mr Belcher (Interrupting) We object that this examination at least should not be leading.

Mr Cadwalader State whether or not it shows —

The Court State what it shows
Mr Cadwalader State what it shows in regards to the fills in the different sections between Pickering's bar and Rices bridge as shown by —

The Court That question is probably long enough now you have stated enough in it.

Mr Belcher I object to this question. This witness is called as far as I can understand the purpose simply to make
 12629 an argument here that

Counsel thought perhaps he could not make himself and therefore he would call an expert to make it for him as to the effect of Mr Urens' Testimony.

The Court I suppose this is like making a diagram of his testimony I will admit it.

Ex Mr Belcher He excepts -

(The Reporter Read the question)
A It shows the various fills given in Mr Urens' table at all the Stations, at the 51 Stations in his table. The fills are put in, they are placed on this map in their proper position - as I understand is the present filling of the River above its original bed.

Q Did you have the Tables submitted by Mr Uren?

A I did sir.

Q As a part of his testimony in this Case?

12630 A This is entirely made from

his tables and nothing else
 @ Now I will ask you whether
 or not you have a line there
 showing the necessary position
 of the bed rock between those
 points and on those sections
Mr Belcher I object to that
 question it is leading

Mr Cadwalader (Continuing)
 Constructed from the grades
 given by Wren and the fills
 given by Wren

Mr Belcher To that question
 I object as leading and the
 examination is improper

The Court The objection is
 well founded - that it is
 leading - Ask him what that
 map shows

Mr Cadwalader What does that
 map show further than what
 you have mentioned?

A The black figures on the
 vertical lines denote the depth
 of the fills in feet as given
 by Mr Wren's table. The irre-
 gular black line denotes
 the original bed of the River

As determined by said depths;
And the red figures on the
same denote the grade of
the bed per mile from station
to station.

Mr Belcher Is that so stated
on the plan.

A Is so stated on the plan
Mr Belcher Then it is our
necessary to read it.

The Witness It is a clearer
statement than I can make
from memory. The black figures
along the upper black line are
the distances between the stations
as shown by Mr Wrens tables
and the figures on this profile
are derived solely from Mr
Wrens tables and from no
other information. It is a
a diagram which is correct
according to that information
— absolutely.

Q Now give us the grade
the original grade of the River
as shown by that diagram
in the different sections?

12632 Mr Belcher I will ask Counsel

if he intends to offer that plan in evidence.

Mr Cadwalader Yes I propose to offer it in evidence.

Mr Belcher We say that that plan with the evidence of Mr Uren is all that can be material.

Mr Cadwalader This is simply a matter of information for the Court.

The Court I understand that this is simply a criticism of one of your experts by another expert. The objection is overruled.

Ex Mr Belcher We except.

Mr Cadwalader Now just read Mr Belcher I would prefer that the witness should not testify to what we can ourselves read. If the paper is put in evidence we do not need the witness to read it for us.

The Court It will not hurt anything. Go on.

The Witness Beginning at Pickering's bar and descending down the River - Shall I read every station?

Mr Cadwalader Yes

A I will now give the grade of the original bed of the River as deduced from this table. Beginning at Pickerings bar. From station one to station two, distance 450 feet the grade was 187 feet per mile. From station two to station three a distance of 538 feet the grade was 124 feet per mile. From three to four distance 553 feet 94 feet per mile. Four to five distance 480 feet 101 feet per mile - Five to six 490 feet 46 feet per mile. Six to seven 735 feet 82 feet per mile. Seven to ten distance 1512 feet 46 feet to the mile. Ten to eleven 516 feet 97 feet to the mile. Eleven to twelve, distance 473 feet grade 46 feet per mile. Twelve to thirteen - distance 692 feet 84 feet per mile. Thirteen to fourteen distance 343 feet 117 feet to the mile. Fourteen to fifteen 485 feet 40 feet to the mile -

Fifteen to Sixteen 1091 feet
 89 feet to the mile. Sixteen
 to Twenty Four distance
 6186 feet grade 40 feet to the
 mile. Twenty Four to Twenty
 Five 1017 feet an ascending
 grade going down stream of
 $1\frac{1}{2}$ feet per mile.

Q That is a grade running
 up.

A Yes running up, ascending.
 From Station Twenty Five to
 Thirty distance 4374 feet
 grade 40 feet to the mile -
 Thirty to Thirty One 820 feet,
 105 feet to the mile. I want
 it to be understood that
 if I do not mention it other-
 wise it is always a descending
 grade. Thirty One to Thirty
 Four 2696 feet 40 feet to the
 mile. Thirty Four to Thirty
 Five 400 feet, ascending grade
 of 91 feet to the mile. From
 Station thirty five to thirty
 six a distance of 866 feet,
 descending grade of 40 feet
 12635 - to the mile. Thirty six to

Thirty Seven distance 490
 feet ascending grade of $13\frac{1}{2}$
 feet per mile. Thirty Seven
 to Thirty Nine 2254 feet
 grade 20 feet per mile. Thirty
 Nine to Forty distance 1775 feet
 25 feet grade. Forty to Forty
 One 440 which brings us to
 Stevens Bridge the grade is
 40 feet per mile. Forty One to
 Forty Three 1825 feet 39 feet
 to the mile. Forty Three to
 Forty Four 860 feet 8 feet to
 the mile. Forty Four to Forty
 Five 656 feet ascending grade
 of 1.7 feet per mile. Forty
 Five to Forty Six 860 feet
 descending grade of 8 feet per
 mile. Forty Six to Forty Seven
 1180 feet 16 feet per mile. Forty
 Seven to Forty Eight 1057 feet
 13.6 feet per mile. Forty Eight
 to Forty Nine 1643 feet 39 feet
 per mile. Forty Nine to Fifty
 1372 feet grade 27 feet
 to Fifty one 881 feet $2\frac{1}{2}$ feet to
 the mile. And from Station
 Fifty One to Rices bridge

distance 1780 feet 21.6 feet per mile.

Mr Caldwell Now we offer that diagram.

The Witness Then there is an average grade given here that I have not read.

Q What is that?

A On the original bottom as shown on this diagram the average grade from Pickering's bar to Warners bridge a distance of 1.24 miles is 82.43 feet per mile. The average grade from Warners bridge to Stevens bridge a distance of 4.41 miles the average grade is $39\frac{1}{4}$ feet per mile and from Stevens Bridge to Rices Bridge the average grade is 21.23 feet per mile. And the distance is 2.29 miles.

Q According to that there would be a hump in the River in several places?

Mr Belcher I object to that. It is leading and an improper question to ask the witness

The Court It is certainly leading
Mr Belcher Do you offer that
 paper in evidence

Mr Cadwalader Yes.

Mr Belcher So that paper
 we have the objection that it
 is not in rebuttal and that it
 is a simple summary up by this
 witness of the testimony of
 Mrs. Green as he understands it.

We make that objection before
 we proceed to cross examine him
 as regards to the correctness of it.
 It simply amounts to an ar-
 rangement of the testimony in
 the form of argument.

The Court overrules the objection
 Ex and defendant excepted

Mr. Cadwalader Have you computed the velocity of the North Fork according to Cutler formula?

Mr. Belcher I object to that as not re-buttal.

The Court. The question is not asked yet.

Mr. Cadwalader (Cmty') Between the points embraced in that diagram? a I have

Mr. Belcher I object to that as not re-buttal.

Mr. Cadwalader I will put the question in this form.

Have you according to Cutler formula, and taking for your guide the grades given by Mr. Uren ascertained or estimated the velocity of the current between Pickering's Bar and Rees Bridge?

Mr. Belcher We object to that as not rebuttal.

Mr. Cadwalader The purpose is to show that it is impossible that such grades exist as given by Uren, and also to show

that the torrent comes as
 irresistible; in other words it
 comes as 17 miles an hour,
 and therefore that there never
 was such a torrent.

The Court. I think I will ad-
 mit it. You can answer the
 question if he has calculated
 the grade by any reliable rule
 omitting Cutler's formula.

Mr. Belcher. The Court overrules
 the objection and we except.

A. The velocity of the
 American River in the first
 section, on the profile from
 Pickering's Bar where the grade
 given by Mr. Allen is 46.09
 feet per mile, the depth of
 the water is assumed at 20
 feet.

Mr. Belcher. You assume the
 depth of the water.

A. I must assume a depth.
Mr. Belcher. We make this
 further objection, that he is
 now proceeding upon a hy-
 pothesis of his own and
 not upon anything that is

in Evidence. None of our witnesses testified to a depth of 20 feet

The Court. If the Evidence does not show satisfactorily that the water was 20 feet deep, the Calculation is of very little consequence. Proceed. Note

Ex. an Exception by Defendants.

The Witnesses So far as the grade is 46.09 from Pickens's Bar to Wavers Bridge a distance of 1.24 miles - that is to say the Computation is made upon that grade; the bottom width of the river 160 feet, slopes 45 degrees, which makes the top width of the water when it is 20 feet deep, 200 feet wide. These are the data from which the computation is made and the result is a velocity of 17.82 miles per hour. I see I have made another Computation in the same section with a depth of 13 feet, the same area that is to say a bottom width of 160 feet

Slopes, 45 degrees, and on the grade of 46.09 per mile, and depth 13 feet, which gives a velocity of 14.01 miles per hour. The third case is the velocity of the river on the last section at Rice Bridge where the grade is given at 24.6 feet per mile, the depth assumed at 13 feet and the water section of the river the same as before 160 feet wide with slopes of one to one or 45 degrees, the result in velocity is 10.25 miles per hour. These are the only computations that I have made.

McAdwalader I will ask you whether you had occasion to examine the Yuba River with a view of finding the kind of materials that were being mined into the river from the hydraulic mines upon it and its branches? a I have

Made such survey.

Q And whether you had occasion to examine the nature of the material in the beds of these streams at the various dumps of the hydraulic mines, or at the various waste places?

A I have done so.

Q I will ask you whether you have examined the bed of that river and its tributaries to the line of clear water?

A I have examined the main Yuba from Marysville to its forks, and the South Fork of the Yuba to clear water, that is above the mining belt, the Middle Fork to clear water and the North Fork in part, not entirely. The other two forks and the main river, I have gone over the whole of.

Q The North Fork to where?

A The North Fork I have examined where it joins the

Mami river, to a small extent there, and to a considerable extent up in the region of La Porte and Howland Flat and the river in that region.

2. At what time in the year and what year did you make the Examination?

A. The Examination was made in the summer and fall of 1879, I think that was the date.

2 About what time in the year? A. The Explorations of the river were made in September, began about the 1st of September and ended about the middle of October, a continuous survey.

2 What does that profile purport to represent?

Mr. Belcher Subject to the question and the profile itself as not in rebuttal. The Cont. I do not know whether it is or not until I know what it represents.

Q. This profile represents the fall and the grade of the Middle Fork, of the South Fork, and part of the North Fork, and of the Main Guba River as I stated, from clean water, from the head of the Mining Belt to its mouth into the Feather River. It represents the grade per mile for each mile, the width of the bed of the river, where there was filling, where the tailings were found, the nature of the tailings, the depth in cubic yards of the different sections, the condition of the river where there were no tailings, where they were swept down, and various other topographical points, which are shown on the map - the dumps of the various mines in the river and so forth.

Q What does that red shading purport to be?

A The red shading represents

the extent and depth of
the deposits of mining tail-
ings as estimated by myself

2. Where there are no red
marks what is indicated?

All where there are no red
marks it indicates that
the river is free from deposit

2. Is the grade of the river
given on that diagram, per
mile

Mr. Delecher object to that.
He has already described
it fully

The Comr. Tell what the map
shows.

A. The grade of the river
is given for every mile. The
profile is divided into mile
sections as indicated by
arrows and numbers, the
miles beginning at the
mouth of the river at
Maysville

}

Q What was the nature of the examination made by you? How much time did it occupy?

Mr. Belcher- He has already stated how much time it occupied, stated when he began and when he quit.

A- The nature of the survey! The purpose of the survey?

Mr. Belcher- No, You are not asked to state the purpose.

The witness- I do not understand what is meant by the nature of the survey.

Mr. Cadwalader- Well was it personally? Made by you personally?

A- It was made by myself in conjunction with an assistant from the State Engineer Department and in conjunction with A. W. Von Schmidt who represented the miner's association and accompanied us on the survey. The three made the survey jointly. I had my assistants; Manson, assistant State Engineer, had his assistant; Von Schmidt had

no assistants. But the survey is a joint survey. This is the result of a joint survey.

Q. You Schmidt represented who?

A. Represented the Mines' Association.

Q. How much time were you three employed on it?

Mr. Belcher - That is repeating what he has already stated.

The Witness - about six weeks on the river surveys.

Q. Did you go into the pits of the principal mines?

Mr. Belcher - Objection: that the examination which the counsel seeks here is leading, and that it is incompetent if it were not so.

The Court - I think I will allow that.

Mr. Belcher - We except.

The Witness - I did.

Mr. Cadwalader - Name the principal ones?

A. Inspected pretty much all the hydraulic mines and

pits on what is known as the San Juan ridge, embracing ^{the} Smarts-ville mines, those at French Corral and at North Bloomfield. Those I believe are between the South and middle Fork.

Q The Eureka Lake?

A I would rather have a map before me to speak positively on that point. I can name mines however without giving their localities.

Q Have you got the map?

A I have not here.

Q Where is it?

A I do not know, I have not seen it lately.

Mr. Belcher. The pits of what mines did you go into?

A By referring to the map I can give the names.

{Mr. Cadwalader here showed the witness a map}

Mr. Belcher. Is that a map in evidence here?

Mr. Cadwalader No, Sir.

Mr. Belcher. Then we prefer the witness should not testify from it.

Mr. Cadwalader. He made it himself.

Mr. Belcher. I do say that this map if it is not in evidence certainly does not belong here and is not a proper matter for refreshing the recollection of the witness.

The Court. Why not as well as any other memorandum which he made in a proper way.

Mr. Cadwalader. I will ask you whether you made that map?

A Not entirely. The map is a compilation. It was made in the Surveyor General's office, compiled from the public surveys. It gives a geographical delineation of the country and notes regarding ^{the} mines. It also shows the different locations from the United States Surveyor General's office of the Placer mines, the principal ones. The delineation of the pits and other notes relating to the mines were made by myself from my exploration. It is a map intended to show the general locality of the hydraulic mines in that belt in

a geographical sense.

Q Now state what mines you examined?

A Beginning at Smartsville, the Excelsior group of mines, including the Excelsior, the Smartsville, the Enterprise and then the mines at Mooney Flat, at French Corral, the Esperanza, the Alexander and the Frazer. At Birchville an old pit the name of which I do not know.

Mr. Wilson. - I would suggest that this detail of all the mines he has visited is unimportant.

The Witness. I will state in general that I have inspected about all the mines that are shown on that map and designated by red colors.

Mr. Cadwalader. You actually went into the pits did you?

A. In most places, I went in as per instructions.

Q Did you go into the North Bloomfield?

A. I did a number of times.

Q Did you examine the character

of the material in the banks there?

A. I did.

Q. Did you go into the various mines of the Milton Company?

A. Several of them.

Q. At what places? Relief Hill and Columbia Hill?

A. At Relief Hill I saw the mines and at Columbia Hill.

Q. And the Eureka Lake at Moors Flat?

A. I do not think that is at Moors' Flat.

Q. Woolsey's Flat?

A. The Woolsey's Flat mine and Moors' Flat mine, dumping into the Middle Fork of the Yuba.

Q. Now state the generally ^{the} character of the material in those mines that was being worked or had been worked when you were there.

Mr. Wilson - State the object of that?

Wm Cadwalader - To show that it is just about the same kind of material found in the Gold Run Mine and the four fifths of it is

floatable in its character - compares with boxes two and three, and to show that at wastage points in the Yuba there were no dams made of this material.

Mr. Wilson What does that illustrate?

Mr. Cadwalader - It contradicts several of your witnesses - notably O'Brien - who testified there was nothing in these mines that would go more than two or four miles from the mine.

Mr. Wilson - It seems to me that this evidence is not at all admissible under the rule of rebuttal, and we object to it on that ground.

The Court - I will permit you, Mr. Cadwalader, to traverse the statements made by O'Brien and other witnesses on the part of the defense as to the character of the material which came from the mines concerning which they testified - the North Bloomfield and the Milton - to show that it was not such material as they show it was.

A - These examinations were made

something over two years ago and I am not prepared to describe them from memory. I made notes at the time and it will be necessary for me to consult those notes. I might confound one mine with another otherwise.

The Court - If the notes were made by you at the time you can use them.

The witness - It would take considerable time to look them up. They are in several books. I can take them up at recess if permitted.

The Court - Probably it would be better to postpone this until after recess then.

Mr. Cadwalader Very well. I will go to another point.

Does that profile show the grade of the river bed at the various dumps of these mines?

A - It does.

Q And does it show the extent of the fill if any to be found at the various dumps?

A- It does.

2- Is it correct?

A- I think it is correct. It is an approximation in some respects. That is, ~~it~~ it is an approximation as to the estimated amount of fill. But I think it is probably as correct as can be arrived at from close observation, instrumentally and otherwise.

2- What is the maximum and minimum grade of the river from Smartsville up?

Mr. Belcher. That we object to as not in rebuttal.

Mr. Cadwalader. I will leave it then just as the profile shows it.

Mr. Belcher. The profile has not been offered in evidence yet.

Mr. Cadwalader. I will ask you whether you estimated the quantity that had been taken out of the pits on the banks of these streams on the Yuba?

Mr. Belcher We object to that as not in rebuttal.

The Court - I will have to confine you to these particular dumps testified to by the witnesses for the defense.

Mr. Hart We except.

Mr. Cadwalader - Now give us the grade of the river at the various dumps; say the North Bloomfield first?

Mr. Wilson - We object to that as not in rebuttal.

Mr. Cadwalader - The grade and amount of material?

Mr. Wilson - We make the same objection

< Objection overruled, defendant excepting >

Mr. Cadwalader - Now take the first dumping ground below clear water at the head of the Middle Fork

Mr. Belcher - What are you going at now? Not the North Bloomfield but something else.

The Court - I think we will take our recess now.

< Recess until 2 P.M. >

In the Superior Court
of the State of California
in and for the County of
Sacramento.

The People of the State of California vs.	} Afternoon Session Friday January 20/81
The Gold Run Ditch and Mining Company	

Testimony

G. J. Allardt

in rebuttal direct resumed.

The Witness Before we proceed
wish to supply an omission
I wish to supply an omission
in this computation as to the
velocity of a stream as per
Cutter's formula. I gave all
the conditions except one which
I omitted to give, and that
is this: Cutter gives a formula

a gives a different and variable Coefficient for different conditions of the Stream, for instance for well placed timber, for ashler and for brick work and for rivers and canals in perfect order

Mr Belcher We object that this Explanation is not called for and that it is improper for the Court. I understand that he suggests that he omitted to state one of the factors in his Computation

Mr Belcher He may state what that factor is but he need not go into an Explanation

The Witness That is all that I desired to state. If the factor is not stated, the Computation can not be followed by others to verify it and that is the reason I want to state it.

Mr Belcher I do not understand that brick are there, and hence they would not

Enter as factors into the
Computation

The Witness I will omit that
and state the factors applica-
ble to this problem alone. The
other was merely explanatory.

The Court. I suppose the witness
has a right to make any
Explanation to his testimony
that he desires, if it is mat-
terial. State what other
factor there is.

A This velocity of the
river is computed upon the
condition that the river is
in good order and regimen,
overgrown with vegetation,
and strewn with stones or
detritus of any sort. That
is a factor used in the com-
putation of velocity, to make
it ^{as} nearly applicable to the
state of the river as possible
under Cutters formula.

Mr Belcher. I move to strike out
the explanation entirely as not
being a statement of anything that
entered into his explanation here.

- not being one of the elements but it is a general explanation. The Court. We will let it stand.

Ex Mr. Belcher excepted.

Mr. Cadwalader. Will you now please to state the character of the bank at the North Bloomfield.

Mr. Dibble. I object to that. It is not in rebuttal. It is not anything that we went into on the direct-examination. I asked no question as to the North Bloomfield. It was called out on the cross-examination; as to whether there was any clay in the North Bloomfield but this certainly is not in rebuttal.

Mr. Hart. We want to show that these washings are the same and that the material washed has been the same both from the top and bottom washings.

The Court. For what purpose?

Mr. Hart. For the purpose of showing that the deposits now in the streams came from both the upper and lower washings;

and for the purpose of showing that a vast amount of the material that comes down comes from the kind of material that they are now working.

Mr. Dibble. If they open the door as to the particular character of material in these mines, we will avail ourselves of the privilege and will go into the subject ourselves.

Mr. Bloat. The defendant in their testimony sought to draw a distinction between the material in the lower channel and the upper material and the object of this proof is to show that no such distinction exists.

Mr. Cadwalader. And we propose to show further the character of the material in these mines that Mr. O'Brien said he was familiar with.

Mr. Cadwalader. State whether you examined the bank of the North Bloomfield where you were in the fall of 1874 and if you did have you a section of it show-

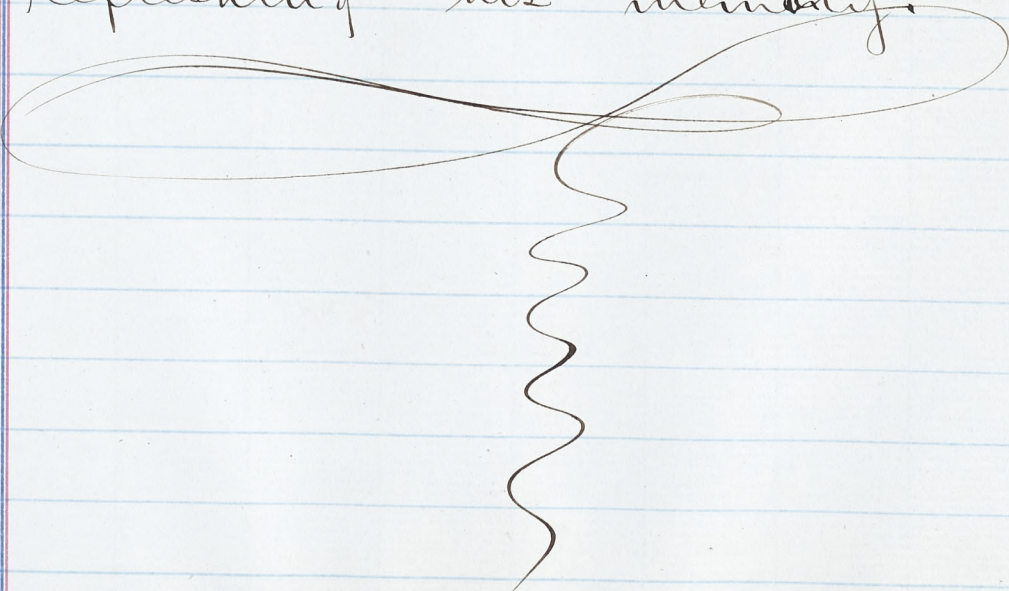
-ing of what it is composed?
Mr. Belcher. Our objection to
 that question is that it is not
 in rebuttal and if the question
 is allowed then we shall ask
 to meet this kind of testimony
 in sur-rebuttal.

Ex. The Court overruled the objection and
 counsel for defendant excepted.

A. I did and I have a section
 of it. I made an examination.

Mr. Belcher. We would prefer this
 witness would not read but that
 he will simply tell what he
 knows and what he saw there.
 We prefer that he should tell
 what he knows simply.

The Court. This paper is
 probably for the purpose of
 refreshing his memory.



Q. Have you your notes?

A. I have.

Q. Of that bank, taken at the time?

A. At the time.

Q. Will you refresh your memory and then state?

A. I have notes of a section or view of the bank, of the North Bloomfield bank taken at that time, giving the different depths of the strata. Now that was two or three years ago and I would not attempt to give the height of these different strata from memory. I must refer to my notes. The figures it is not supposed I could remember for two years. I have the notes here before me.

Q. Now consult your notes and tell us all about that bank?

A. Commencing at the natural surface.

Mr. Belcher I would prefer that the witness should not read from the book.

Mr. Hart - The Statute authorizes him to do that.

The Court- I so understand it; that he may refresh his memory from the book.

Mr. Belcher- Then I think we should have an opportunity to inspect the notes first.

{ The witness handed Mr. Belcher the notes }

Mr. Cadwalader- Now read.

A. Commencing at the natural surface and going down, total height of bank approximately 220 feet; red soil eight feet; cemented boulders eight feet; red sand five feet; pipe clay 42 feet; gravel and sand 31 feet; pipe clay 21 feet; blue and gray gravel 105 feet to the bed-rock or bottom of the pit.

Q. Just describe that last strata, that blue and gray gravel?

A. That I must describe from memory. It is a bluish color, not blue, my recollection is; composed of small stones, gravel and some sand cemented together- I suppose cemented with considerable firmness. The whole bank was verticle almost verticle from top to bottom.

2. 220 feet?

A. Yes.

2. What was the character of this gravel at the bottom of the stratum?

A. I have just stated it was of a blue color composed of small stones, sand and enough cemented material of some kind to hold it together, my recollection is, with considerable tenacity. It was quite firm.

2. How would that bank compare with the bank of the Gold Run?

A. Which part of the Gold Run do you refer to?

2. Take the whole; take the whole 200 feet; take the whole surface of the ground.

A. The Gold Run pit you refer to?

2. In the large pit.

A. The present workings, I understand you?

2. Yes, running from the stratum ~~deep~~ surface down to the bottom of the pit?

A. Of the present deep pit, I understand you.

Q. Yes.

2. Yes. The present deep pit with the bank above. Or take it first your own way, which ever way you want it in order to illustrate your notions?

A. I do not want it any particular way. I would like to have the question definitely put.

Q. Well illustrate your ideas? That is what I want you to do?

A. I merely want to know with what particular bank I am to make a comparison; whether it is from the natural surface down of the Gold Run mine?

Q. Divide it into two parts. Go from the natural surface down in each case and then divide it up?

Mr. Belcher We object that this is not in rebuttal.

The Court - So on.

Mr. Belcher - We except.

A. In the deep pit of the Gold Run mine designated as pit Number "one" I think in Grunsky's diagram, the banks are somewhat different. I think the lower strata in the Gold Run Mine have varying

heights, from ten perhaps up to twenty or thirty feet on one side, according to my recollection, much harder cemented than that in the Bloomfield and what I understood to be blue gravel deposits generally. And as for the material composing it, the stones are larger, are considerable larger. That is the largest stones might be perhaps two feet in diameter as far as they are visible in the bank, running down from that to small gravel. Above this cemented layer in the Gold Run pit is a layer of gravel, what I understand miners call gravel, rising in some cases one hundred feet above this lower strata. That is composed of stone. Very few of the stones I think are as large as a man's head; I think those are rare.

The Court: You have described that before. You are now asked simply to make a comparison.

A: Then I will say as to comparison with this top strata, as to dimensions of material, the dimensions are a little smaller than they are in this

bottom strata, this 105 foot strata, of the North Bloomfield, according to my recollection, I do not think there is very much difference, but the cementation I do not think is quite so great in the Gold Run Mine as it is in the lower strata of the North Bloomfield.

Mr. Cadwalader - Now go on towards the top.

A. The upper banks of the Gold Run Pit are composed generally of heavier material. That is to say when I speak of heavier material I mean material of larger dimensions than in the North Bloomfield. We find hardly any pipe clay, very little. There are layers of gravel and sand, alternate layers of gravel and sand. Much of the gravel even near the top is very much closer in my opinion than in the North Bloomfield. When I speak of coarser I mean dimensions as to the diameter, what can be seen by the eye.

Mr. Hart - When you speak of the upper material, what do you

mean?

A. I am now describing the banks that I saw from the natural surface down, extending for two or three miles up and down the pit.

Mr. Cadwalader - There had been no top earth taken off as far as you could say at the North Bloomfield because the bank is verticle and embraces the natural soil.

A. In the North Bloomfield the natural surface was still visible.

Q And the bank is verticle?

A. Pretty nearly so. A very steep slope.

Q Now go to the ruins of the Milton Company and describe the banks there.

Mr. Belcher We make the same objection, continuing it.

Mr. Cadwalader - By reference to the North Bloomfield or by reference to the Gold Run?

A. I do not know that I know. What is the Columbia Hill, the Milton mine?

Q - Yes. Columbia Hill and Relief Hill.

A - Columbia Hill is worked by the Turcka Lake and Yuba Canal Company, I have it here.

Q Well give us that?

Mr. Belcher To that we make the same objection.

A - My notes in regard to the Columbia Hill mines are quite brief, and those mines are very extensive. I simply state here that it is all loose material, by which I mean material that could be easily washed as far as I observed it.

Q From top to bottom?

A - I think so. There may be some places there that are not so, but I have no notes of them here.

Q What kind of material?

A - I can not say anything more than that, from memory as to that mine.

Q Well what other mines? Take the Smartsville mines?

A - I have more distinct recollection about the Smartsville mines. There it is generally what is called heavy material. That is to say

there is no top soil but it is all blue gravel partly cemented together. I can not say as to what tenacity but at Mooney's Flat, which I believe is a Smartsville mine, the material is lighter. There is a good deal of earthy material being washed down there. That is an original mine and tails into Deer Creek.

2. Now compare the banks you saw there, How would the banks there compare generally?

Mr. Belcher - Where?

Mr. Cadwalader - On the Yuba, with the banks in the Gold Run Mine in the matter of being moved by powder and water.

Mr. Belcher - We interpose an objection here that they go into a general question now which would require a long cross-examination and a large amount of testimony to meet it.

The Court - I believe the same questions were asked by you of a great many witnesses; as to the character of the material

thrown in from all the Yuba mines.
 { Mr. Cadwalader read from the
 testimony of O'Brien. }

{ Objection overruled }

Mr. Cadwalader - Take the Smartsville mines, were they washing?

A. On the Yuba there are quite a number of mines. They are mining what you might call virgin ground. They are mining top but the upper ground goes with it. It is very light, a great deal of it. Of course much more of it goes than does in the case of the present washings of the Gold Run. My recollection is that all those mines or most of them have a strata of what is called blue gravel in the lower portion, not like this sample number one I think, but it is blue gravel and pretty firmly cemented. They have more pipe clay in that originally a layer more of red dirt because the upper soil has not been washed away. For instance at Sailor Flat and at Woolsey's Flat I remember

there are large slides from the side-hills. They are working those mines very deep and may be working the lower material; but large slides come down of very loose material and that must be removed. So I think on the whole there is a good deal more, a larger percentage, of what might be called fine material as contradistinguished from coarse on the Yuba, in the hydraulic mines on the Yuba belt, than at this particular mine in Gold Run.

2. How in regard to the original surface of the ground appearing in those mines?

A. The original surface of the ground in all the mines as far as my observation goes is very much alike.

2. Was it all there generally?

A. I said that there were a number of mines where the surface ground comes down with the rest. They are working them deep but it comes down with the rest. It is undermined and it must be carried away.

2. That is what I want to get at.

Had there been any such top-washing on the Yuba as there has been at Gold Run so far as you noticed?

A. Yes. I think that has been rather a general case. I know that is the case in the North Bloomfield. The North Bloomfield first excavated a long pit, a mile or so long, an oblong pit; and of course all the top ground in that pit is gone. But if they continue to wash the sides of this pit the same kind of material will continue to come down, that is the light material with the heavy. That depends on the direction in which they wash or work. When I saw it they were working against these high banks. Were the banks vertical where they were washing?

A. Very nearly vertical, not quite.

Q When you were there?

A Yes.

Q And the movement of the lower stratum insured the movement

of the upper?

A Inevitably.

Q How was it with O'Brien's mine at Smartsville? Was he washing from the top soil down?

A I think not. My recollection is that he was not with the exception of the Mooney Flat mine, which I mentioned before, he was washing from the original surface down.

Q How much bank had that mine?

A I think about one hundred feet high.

Mr. Belcher - what mine?

A The Mooney Flat mine, recently opened. At that time it had been recently opened.

Mr. Cadwalader - How high are some of the banks of these mines that were being washed on the Yuba when you were there?

A I think the North Bloomfield had the highest banks that I have any recollection of; between two hundred feet,

I mean one verticle bank, not in benches, I think, as I gave it you, 220 feet is one measurement; that there might be some a little higher than that.

2 When the banks are so high are they not obliged to work in benches?

A - I suppose that depends on circumstances. It depends on the liability of the ground to slide in upon them. If they can get near enough with safety

Mr. Belcher {Interrupting} This is hypothetical purely. If this witness does not know of his own knowledge I take it it is not necessary for him to speak in regard to that matter.

Mr. Cadwalader - Now give us the grades at the dumps of these different mines.

Mr. Belcher - We object as not in rebuttal and as immaterial.

The Court - I believe that is involved in the proposition to which you objected before.

Mr. Belcher - Yes.

The Court - You have an exception to that?

Mr. Belcher - Yes. But I repeat the objection.

The Court - Enter another exception now, Mr. Reporter.

The Witness - It occurs to me in regard to the previous answer that I said the North Bloomfield was piping against this high bank. They were also piping against a blue gravel bank. That was another point, where my recollection is there was no top dirt on it. Shall I answer the last question?

Q. Will you give us the quantity at those various dumps according to your survey?

A. Those quantities are shown on this profile.

The Court. At the dumps.

A. At the dumps, yes. Shall I go on.

Mr. Cardwalder. Do you know the amount Mr. Allardt that had been taken out of the pits of the hydraulic mines adjoining the Yuba in 1874?

A. I made an estimate of it at the time; and approximate estimate.

Q. You recollect what it was.

A. I think about 160 millions yards. That is my recollection. I think I have a report of it.

Q. What amount did you find lying at the dumps starting below the mines at Smartsville of that 160 millions?

A. You want me to speak from memory?

Mr. Belcher. I think the exception is sufficiently to cover this testimony.

Mr. Cadwalader. I will ask you whether you made an estimate?
 A. I did.

Mr. Belcher. We object to that paper until we have seen it.

<The paper was here handed to counsel for the defense.>

Mr. Cadwalader. <Handing paper to witness.> Go ahead?

A. You asked what is the amount?

Q. The amount put in the Yuba according to the cuts?

The Court. He stated that.

A. I stated it from memory but it was not correct.

Mr. Cadwalader. Well, what was it?

A. 176,061,000; that is my estimate.

Q. What amount did you find the dumps?

A. 215,000. (Was 21,000,000 I think he said. HSP)

Q. What percentage is that of the matter deposited? — what percentage does the matter deposited bear to the matter remaining?

A. About 14 per cent.

Q. That is, 86 had gone below Smartsville?
 Ayes.

See folio 13.257 vol 10 where 21,000,000 is stated

Q. Below the Smartsville mines?

A. Yes.

The Court: 86 per cent did not remain at the dumps.

Mr. Cardwiler. ^{This} ~~Does~~ 86 per cent did not remain at the dumps?

The Witness. Possibly I have not been understood exactly. There is only 14 per cent left in the river, dumps and all. Most of it is at the dumps. For instance here is a dump (Pointing) and all that deposit is material below the dump and at the dump - probably at the dumps. Of course there is a great deal more than 14 per cent immediately at the dumps. This is not the entire river. 14 per cent was found and 86 per cent was not found above Smartsville.

Q. Have you got some photographs?

A. I have.

Q. Just produce them.

Mr. Belcher. O, you mean photographs of his family?

Mr. Cardwiler. Just produce the photographs.

Q. I have two sets here and I will arrange them according to their price. They are both alike - both sets.

Q. Just state what No. One is and hand it to the Court?

Mr. Belcher. Are you going to offer them in evidence.

Mr. Cadwalader. Take No. One and hand it to the Court and if there is any discussion about it, it ~~can~~ ~~will~~ come afterwards.

Mr. Belcher. I think it will come ~~when~~ ~~under~~ No. One is presented.

Mr. Cadwalader. Take No. One in your hand and state what it is?

Q. In connection with that I must show it ~~at~~ the map, in order to show the locality where this photograph was taken.

Mr. Belcher. That is, you must do that before you can tell where Number One is.

Q. No sir. This tracing (Exhibits paper) is a copy and a traced copy of Mr. Men's map of the excavation of the Gold Run District. The points I have

marked in red are the locality of the different photographs and of the sketches that I have taken. 2. Now take No One?

A. This tracing shows the place the photograph is taken and the direction of the site sight — the direction of the sight and the direction of the photograph.

Mr. Belcher. We will ask you for what purpose these photographs are introduced or are sought to be introduced.

Mr. Cadwalader. First, for the convenience of the Court; second, for the purpose of comparison; third, to give everybody connected with this case an understanding of the locus in quo; fourth, to show the comparative ^{sizes} ~~seasons~~ of the material in the different strata; fifth, to show where the sand occurs and the precise relation that it bears to the other waste of the the bank.

Mr. Belcher. We object first that

that they are not in rebuttal;
 second that they are immaterial, and third that pictures of that kind are necessarily false.

Mr. Leadwelder. We will show in that direction that they are true as a matter of fact.

Mr. Hunt. I think these photographs are admissible on another ground: as determining whether or not the distinction exists between the old washings and the new washings or has that character of the material in the bank which they have undertaken to show here — the heaviness of the material. We propose to produce pictures of both and to present the explanations of the artist which I think will sufficiently demonstrate the exact size and condition of the material. It has been testified by these witnesses here, on behalf of the defendant, that the line of distinction between the different

parts of the bank is very high up and that the blue gravel extends to the top of this line of distinction. We expect to show that there is very little blue cement there and that the line of distinction is very close to bedrock and that there is at least 100 feet of upper material still there which has not been washed off. It would be in rebuttal as tending to show that they had not washed all of the light material as has been testified to by them.

The Court. I think this would be reopening the case. It was a part of the plaintiff's case to show the character of that material in the beginning. The objection will be sustained and you can shake your exception that it will be most available to you. But I will reserve my ruling as to the upper washings until you have an opportunity of examining

the testimony and ascertaining if the subject was not entered into to on your case in chief. I will reserve my rulings as to the admission of these photographs in connection with the upper washings in the mine, but I will decline to receive them at present as I do not care to reopen the case.

Mr. Hart. We will make the offer then to prove them by this witness, and the Court for the present can sustain the objection and we will take exception.

The Court. Both sides may look at the evidence and ascertain if any proof has been offered on the part of the plaintiff in regard to the upper washes and I will reserve my ruling until another time - until we have an opportunity to examine the record as to that point. It is a matter of some importance and I do not care to rule

on it - now.

Mr. Cadwalader 2. There is a question that I have forgotten to ask you. I want you, Mr. Allard, if you can to contrast the mining with the natural wash on any the American watershed?

Mr. Belcher. I shall object to that as not being in rebuttal in the form in which he proposes it. This witness was asked, when he was on the stand, if I recollect correctly, and he stated his general impressions, in regard to the natural wash.

The Court. I do not remember as to that but Mr. Hall was asked some questions about it.

Mr. Belcher. It was Mr. Hall and it was part of their case in chief. When they undertake to offer evidence on a ^{subject} ~~study~~ the subject must be exhausted.

The Court, after argument, admitted testimony as to the natural erosion but not, etc, but declined to permit evidence as to the amount

of mining done. >

Ex. Mr. Belcher? We except.

Mr. Cadwalader. Mr. Allard, state your knowledge upon the subject of the natural wash in such sections of the American and Bear rivers and the Yuba valley water sheds that you have visited and examined?

The Court. I do not suppose you mean natural washing alone but washing from other causes than recent mining.

Mr. Cadwalader. That is the sense in which they used natural washings. It embraces everything.

Mr. Belcher. I desire that the witness shall state facts and not conclusions.

A. I understand by natural washings that it is as if there were no mining.

Mr. Cadwalader. It is not to include mining but everything else but mining. It includes whether or not the old mining and excludes the recent mining.

C. If I am to confine myself to my
 own observations, I will state that
 I have travelled over the water-
 shed of the Yuba and the
 Bear and the American to a
 considerable extent, notably in
 the last three years and I
 think invariably that my
 journeyings in that country
 were with the object of as-
 -certaining where the material
 in the valley had come from.

So I paid more particular at-
 -tention to that than perhaps
 a casual traveller would. Now,
 looking at the Yuba watershed. The
 roads are mostly on ridges
 except such roads as cross
 streams - large streams, those
 are technically called grades.
 These are artificial roads. I
 suppose that I have travelled
 over several hundred miles of
 those roads on the Yuba and
 have seen perhaps quite a
 number of hills. In that
 country we can see a long
 ways. We can see from me

ridge to another. I have not observed any great rushing on those roads. They are generally in good repair and I think from that source that the natural rush would be inconsiderable. I have seen many of the roads on the American River and on the Bear River. Now as to the facility with which the natural surface is eroded. We think on all these watersheds — Mr. Belcher (Int'y.) I understand that this witness is not called upon to give an opinion at present. The answer he is now about to give it seems is expressing an opinion.

Q. I do not consider it a giving an opinion hardly. Perhaps it might be difficult to answer the question without giving some opinion. The natural soil on the watershed is mostly composed of a rather tenacious material, which is not liable to rush. It is this red soil. From the foot-

- hills up about as far perhaps as Alta, Mooses Flat or even to Omerville and beyond that - as far as my ~~opress~~^{observation} goes the surface of the earth is quite rocky, hard. Where there are no rocks it is usually covered with vegetation or trees or shrubs which protect it against the wash. Now, as to the character of erosion in the loamy soil, it is seen all over that watershed that it is very slow, very slight. We see for instance that it is a very rare case that a tree is uprooted or that the natural soil is washed away from the roots although trees stand on the side-hills - trees that are 400 years old. I have further observed - I have seen I believe only two or three slides. Of course there may be more slides, but I have not, in all my travelling in the last three years, I do not think, seen more than two or three slides which I attributed to natural causes. I have seen a

great many that were caused by the working away of ditches, starting the soil where there was an overflow from the ditches or sometimes from the waste out of the ditches and that had caused considerable natural wash, considerable erosion. But I think I can say generally that the soil and this surface of the country on the watershed of those two rivers is singular — is not liable to wash from the natural causes as much as rain or the melting of the snow to any great extent.

Q. What do you have to say upon the subject of grasses, bushes and flowers being exposed that would indicate very readily any considerable degree of erosion from rain?

Mr Belcher. Subject to that question. It is unintelligible? The Witness. I think I understand the question. Of course where the surface soil, where the land is denuded of its soil, we

can not find any vegetation, while I suppose the whole watershed of those rivers is covered with vegetation except where the rock crops out. That has been my observation. There are very few bare places, absolutely bare of vegetation. All this small undergrowth, ferns and small plants protect the soil.

2. What do you have to say to the steepest hillsides containing the densest shapera?

The Court That is rather leading, but it is not objected to.

a. On the Yuba — I have noted that more particularly on the Yuba, although I think at places on all those rivers — on the American and the Bear I have noticed it. The slopes are usually very steep — from 20 to 45 degrees. One side — one slope is almost always covered with trees and shrubbery and on the opposite side that is exposed to the sun there

is very little vegetation generally. It is rock, almost bare rock. There is a great deal of it that seems to be of that general character. One side is covered with vegetation and the other side is more or less bare. When we come down lower in the foothills it is not so much the case. There is more open country.

Q. What do you have to say about the annual grasses making their appearance upon that watershed regularly and annually.

A. Annual grasses?

Q. Yes?

A. Those that spring from the seed every year.

Q. Yes.

A. I can only say that if there was no soil I should hardly think they would spring up again. The seed would not find a foothold and grass would not be produced and therefore there would be many bare spots visible, which I do not think is the case - spots devoid of vegetation.

2. What do you have to say about the cones - upon cones and upon leaves being strewed in the neighborhood of the trees?

Mr. Belcher. I object to that question. It is clearly suggestive. Mr. Cadwalader: I will put it in this form.

Mr. Belcher. I object because the question has been asked in that leading shape.

The Court. Do you find pine cones anywhere there?

Mr. Cadwalader. And pine leaves. A. Throughout the forests, throughout the pine covered region of that country the ground is usually covered with a layer of pine leaves, decayed leaves and cones several inches in depth, perhaps more. I have seen that on side hills. It is covered that way and it seems to be a protection against erosion.

I state whether or not it interfere in any degree with walking over those surfaces

where there are trees?

Mr. Belcher. Subject to that question. It is leading.

Mr. Cuddeback. I will withdraw that question and I will ask you to state: what is the proportion of rock surface to the soil surface in those different watersheds?

a. The watersheds of all those rivers are fan shape so to speak: that is, they are the narrowest at the valley and they spread out as they approach the Sierras, and I do not think it would be far out of the way to say that the rock portion comprises at least half of the water shed; that is, that portion where the rocks are very near the surface, are at the surface. They are so west of the summit. — We have large masses of granite as far as the eye can reach and but very few trees. I have seen a good deal of that myself.

2. Take the first 20 miles, or say

30 miles west of the summit of the Sierra Nevada and state how it is for soil and how it is for ~~peg~~ rock as it has been seen by you?

Q. The first 30 miles?

A. Yes.

Q. If I could refer to a map I think I could answer that question more intelligently. I can hardly say how far 30 miles would extend.

A. Well take the region traversed by the snow sheds of the Central Pacific Railroad (Conting), of course going over the different ridges and also the region of the lakes or the origin of the lakes and the reservoirs?

Q. I think 20 miles, perhaps 30 miles might show up that character. For instance, the reservoir at the head of the lakes. I was up there some years ago with the Superintendent of the Bloomfield Mine and I saw that the entire country, long before we reached the place, was almost barren and was

largely composed of rock and I should judge that the same thing can be said of Silver Lake and of Blue Lake. Those are at the head of the Mokelumne.

2. Have you done any surveying at the head of the Blue lakes?

A. Yes.

2. State if you know the nature and the effect of the snow in the ~~winter~~ matter of erosion?

A. I have travelled over snow banks somewhat in the summer time. Certainly at that time the efflux from the water under the snowbank was very gentle - very gentle. There ^{is} ~~was~~ no erosive action directly under the snow bank until the water accumulates and reaches a ravine or a cañon and then the action probably would be greater. I do not think that any erosion can be attributed to the snow - only to the sudden melting of the snow; and of course the erosion then would

be equivalent to that of a great rain-storm. But as the snow is principally in a region that has a harder surface, I should think the erosion from that source would be as great as the erosion from rain-storms further down in the valley where there is a greater depth in the soil. It seems to me that the snow is more than a protector of the soil than it is an eroder.

2. What underlies the eroded soil as a general thing?

a. Generally, as far as I have observed, gravel deposits. Where I have seen it exposed, I have observed from four to six feet of soil and then generally a layer of gravel.

2. Have you been in the divide between the South and Middle Forks, called the Georgetown divide?

a. Of the American?

Yes.

Alas sir.

2. You have not?

a. No sir.

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Q. Have you been on the Down
Shill divide?

A. Yes I have.

Q. Do you know anything
about the roads on that divide
and the roads leading to it?

A. There is one road from
Colfax to the Down Shill, a wagon
road; and there is another
road from the lower part of
the divide along the divide
generally. Those are the only
roads I know of that are
travelled to any extent. They are
not travelled a great deal. There
are old roads here and there
that are overgrown with brush.

Q. Is there more than one
road up the center of that
divide or up the divide?

A. I do not think there is.

Q. Is there more than one road —
Mr. Belcher. Let him tell what there
is there.

Mr. Cadwalader. Is there more
than one road — what roads
are there upon the Gold Run
divide, say above Gold Run?

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A. There is the Litch Hat
road which follows that divide.
That follows the divide for some
distance above Alta to my
knowledge. I do not know
how far it extends.

Q. Where do the snow sheds
commence on that divide?

A. I can not say. I can not
remember. Some distance above
Alta.

Q. Do you know how long the
snow sheds are?

A. From statements made by
the Railroad men, I have heard it.

Q. You do not know the length?

A. I do not.

Q. State, if you know, when
these reservoirs commenced
filling or what you know on
that subject?

A. ^{One} case came under my
observation which I think
would be applicable to all
those reservoirs and that
is in regard to the Blue
lakes. I went up there in
1878, I think it was in July.

There is a dam across the outlet of the Blue lakes and in July - it was in the latter part of June or July - the lake had not filled. The dam was about 1200 feet above the line of water in the lake and it had not filled. The snow had not commenced to melt. This was at an elevation of about 7500 feet. The Bowman Reservoir, I think is on an elevation of about 5000 feet. Those reservoirs are filled somewhat lower than that. They had probably been filled up in the early spring, perhaps in May when the snow begins to melt on those high peaks. I hardly think any accumulations occur during the winter time, though I do not speak from personal observation, not having there for a winter; but I am speaking from my general knowledge on the subject.

2, This is your conclusion and is not a statement of what you know?

Ans. It is my conclusion derived from observation of what I have seen of the Blue lakes.

Mr. Leadwader. I will ask you to state, if you know the manner in which the Yuba River enters the Feather River?

Mr. Belcher. I object to that question. It is not in rebuttal.

Ex. The Court sustained the objection and the counsel for the plaintiff excepted. >

Mr. Leadwader, Mr. Allard, I would ask you, if you know, the comparative height of the channel of the Yuba River abreast of the northeast corner of Marysville, with the ground forming that site?

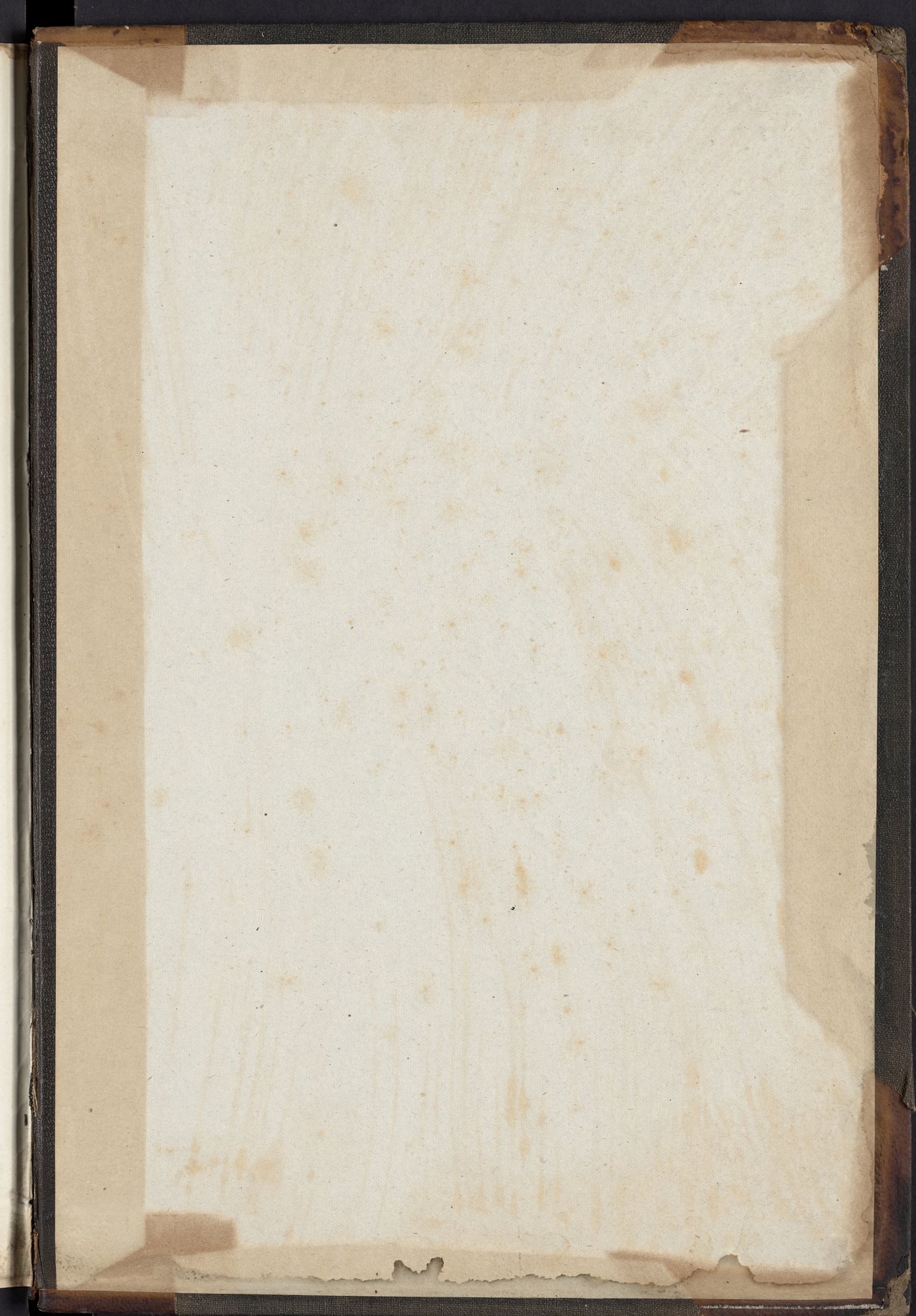
Mr. Belcher. I object to that question. It is not in rebuttal. We have not endeavored to show any matter of this kind.

The Court sustained the objection and

Ex counsel for the plaintiff excepted
 Mr. Cadwalader. We want to
 show by this witness that
 at one time 40 odd millions
 of yards came down within
 8 miles of Marysville.
 The Court. I do not think
 I will allow that testimony.
 Mr. Cadwalader. It will
 be for the purpose of contra-
 dicting ~~the~~ Mr. O'Brien.
 The Court. I will give you an
 exception Mr. Cadwalader?

Ex. Mr. Cadwalader. We except.

————— " —————
 Here the Court took a recess
 until tomorrow (Saturday)
 morning January 21st. at
 9.30 A.M.
 ————— " —————



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